

³ The Board notes that, following the June 14, 2021 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 10 percent permanent impairment of each lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On November 12, 2019 appellant, then a 32-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on November 11, 2019 he injured both knees when retrieving a suspicious item and restraining an inmate while in the performance of duty. He stopped work on November 11, 2019. OWCP accepted the claim for a rupture of the patellar tendon in the right and left knees. On November 13, 2019 appellant underwent a repair of the right and left patellar tendons. OWCP paid him wage-loss compensation on the supplemental rolls effective December 27, 2019 and on the periodic rolls effective January 5, 2020.

A magnetic resonance imaging scan of the right knee, obtained a July 23, 2020, showed mild-to-moderate partial thickness interstitial tearing of the repaired patellar tendon.

In a functional capacity evaluation (FCE) dated December 11, 2020, physical therapists found that appellant had 4/5 strength of the right and left knees.

In an impairment evaluation dated December 11, 2020, Dr. Kevin Murr, an orthopedic surgeon, reviewed appellant's history of bilateral patellar tendon ruptures treated with surgery.⁴ He diagnosed a spontaneous rupture of the tendons of the bilateral knees. Dr. Murr measured range of motion (ROM) of the right knee three times, with the greatest measurement on the right of 120 degrees flexion and negative 8 degrees extension, and on the left of 120 degrees flexion and negative 5 degrees extension. He further found some atrophy on the right side. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁵ Dr. Murr identified the Class of Diagnosis (CDX) as a class 1 ruptured tendon with mild motion deficits, which yielded a default value of seven percent according to Table 16-3 on page 509. He applied a grade modifier for functional history (GMFH) of one on the right side based on appellant's mild antalgic gait, and found a GMFH on the left was not applicable. Dr. Murr further found a grade modifier for physical examination (GMPE) of one for both the right and left knee due to mild motion loss and that a grade modifier for clinical studies (GMCS) was inapplicable. Applying the net adjustment formula yielded no change for the default value of seven percent impairment for each lower extremity.

On June 8, 2021 appellant filed a schedule award claim (Form CA-7).

In a report dated June 5, 2021, Dr. James W. Butler, Board-certified in occupational medicine, serving as a district medical adviser (DMA), identified the CDX using Table 16-3 on page 509 as a class 1 patellar tendon rupture bilaterally with significant weakness based on appellant's 4/5 knee strength, which yielded a default value of 10 percent. He applied a GMFH bilaterally of one due to appellant's antalgic gait, a GMPE of one due to bilateral palpatory

⁴ Physical therapists performed the impairment evaluation and Dr. Murr cosigned the report.

⁵ A.M.A., *Guides* (6th ed. 2008).

findings, and a GMCS of one for clinical studies showing mild pathology. Dr. Butler found no change from the default value of 10 percent after applying the net adjustment formula. He noted that appellant's ROM measurements for the knees were normal according to Table 16-23 on page 549. Dr. Butler found that he had reached maximum medical improvement on December 11, 2020. He concluded that appellant had 10 percent permanent impairment of each lower extremity due to appellant's patellar tendon rupture.

By decision dated June 14, 2021, OWCP granted appellant a schedule award for 10 percent permanent impairment of the right and left lower extremity. The period of the award ran for 57.6 weeks from May 23 to June 30, 2022.⁶

LEGAL PRECEDENT

The schedule award provision of FECA,⁷ and its implementing federal regulations,⁸ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.⁹ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.¹⁰

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health (ICF)*.¹¹ Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).¹² The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹³ Evaluators are directed to provide reasons for their impairment

⁶ OWCP advised appellant that it was adjusting the starting date of the schedule award to May 23, 2021 as he had received wage-loss compensation for disability until that date.

⁷ *Supra* note 2.

⁸ 20 C.F.R. § 10.404.

⁹ For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (March 2017); *see also id.* Chapter 3.700, Exhibit 1 (January 2010).

¹⁰ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹¹ A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

¹² *Id.* at 494-531.

¹³ *Id.* at 411.

choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹⁴

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 10 percent permanent impairment of each lower extremity, for which he received a schedule award.

In support of his claim, appellant submitted a December 11, 2020 impairment evaluation from Dr. Murr who diagnosed a bilateral tendon rupture of the knees. Dr. Murr measured the ROM of the knees three times, finding a maximum measurement of 120 degrees flexion and negative 8 degrees extension on the right and 120 degrees flexion and negative 5 degrees extension on the left.¹⁶ Using Table 16-3 on page 509 of the A.M.A., *Guides*, he identified the CDX as a class 1 ruptured tendon with mild deficits in ROM, which yielded a default value of seven percent. For the right side, Dr. Murr applied a GMFH and GMPE of one and found a GMCS was not applicable. For the left side, he applied a GMFH of one and found a GMPE and GMCS was inapplicable. Dr. Murr found no change from the default value of seven percent.

On June 5, 2021 Dr. Butler reviewed the December 11, 2020 FCE and impairment evaluation. He identified the CDX as a class 1 patellar tendon rupture with significant weakness based on the FCE's finding of 4/5 knee strength bilaterally, which yielded a default value of 10 percent according to Table 16-3. For the bilateral knees, Dr. Butler applied a GMFH of one based on appellant's antalgic gait, a GMPE of one due to bilateral palpatory findings, and a GMCS of one for mild pathology. Applying the net adjustment formula yielded no change from the default value of 10 percent.¹⁷ The Board notes that there is no asterisk by the ruptured tendon diagnosis in Table 16-3 allowing the use of the ROM as an alternative method of assessment.¹⁸ The Board finds that the evidence supports that appellant has no more than 10 percent permanent impairment of each lower extremity due to his patellar tendon rupture. There is no current medical evidence

¹⁴ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁵ See *supra* note 9 at Chapter 2.808.6(f) (March 2017).

¹⁶ The A.M.A., *Guides* provides that the evaluator shall obtain three ROM measurements and the greatest measurement should be used. A.M.A., *Guides* at 544.

¹⁷ Utilizing the net adjustment formula discussed above, (GMFH - CDX) + (GMPE - CDX) + (GMPE - CDX), or (1-1) + (1-1) + (1-1) = 0, yielded a zero adjustment. Even if the GMCS is inapplicable as used to identify the CDX, the net adjustment would remain zero.

¹⁸ See *T.B.*, Docket No. 20-0642 (issued September 30, 2020); *N.M.*, Docket No. 19-1925 (issued June 3, 2020).

of record, in conformance with the A.M.A., *Guides*, establishing a greater permanent impairment.¹⁹

On appeal appellant contends that his impairment is greater than that found by Dr. Murr and the physical therapists. As discussed, the DMA found that appellant had 10 percent permanent impairment of each lower extremity rather than the 7 percent found by Dr. Murr. Appellant has not submitted evidence demonstrating a greater impairment rating of the lower extremities based on the standards of the sixth edition of the A.M.A., *Guides*.²⁰

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 10 percent permanent impairment of each lower extremity, for which he received a schedule award.

¹⁹ See *D.C.*, Docket No. 20-0916 (issued September 14, 2021); *M.H.*, Docket NO. 20-1109 (issued September 27, 2021); *A.T.*, Docket No. 20-0370 (issued September 27, 2021).

²⁰ *M.H.*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board