United States Department of Labor
Employees' Compensation Appeals Board

E.D., Appellant	)	
	)	
and	)	**Docket No. 21-1293**
	)	**Issued: January 25, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Richmond, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 26, 2021 appellant filed a timely appeal from a May 6, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the May 6, 2021 decision and on appeal, 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 her burden of proof to establish greater than seven percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On August 23, 2019 appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2019 she injured her left knee when she stepped down off a step and felt something pull in her left knee, while in the performance of duty. She stopped work on August 12, 2019 and returned to part-time modified work on December 7, 2020. OWCP accepted the claim for left knee sprain and tear of the left knee medial meniscus. It authorized a left knee medial meniscectomy, which appellant underwent on June 16, 2020.

An August 12, 2019 x-ray of the left knee read by Dr. Salvador Trinidad, Jr., a Board-certified diagnostic radiologist, revealed no fractures or dislocations, the knee joint was well-maintained, the articular surfaces were smooth, and no loose bodies were evident upon the joint space. He advised that appellant's left knee was normal.

An October 10, 2019 magnetic resonance imaging (MRI) scan of the left knee read by Dr. Joseph McMonagle, Board-certified in diagnostic radiology, demonstrated medial meniscus posterior horn oblique tear, overlying. It also revealed a grade 1 medial collateral ligament abnormality, mild tricompartmental degenerative osteoarthropathy, no high-grade cartilage abnormality, small left knee joint effusion, intra-articular loose body within the posterior aspect of the intercondylar notch, approximately 3 millimeter (mm) in size, and superiorly extending Baker's cyst.

In a report dated January 21, 2021, Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon, noted that appellant continued to have sharp left knee pain. He related that appellant's physical examination indicated medial and lateral patellar facet tenderness and medial joint tenderness. Dr. Wardell also noted that appellant had 0 to 100 degrees of motion of the left knee, with good stability and valgus stress testing, with some patellofemoral grinding. He also noted that review of a January 21, 2021 x-ray demonstrated medial joint space narrowing and mild patellofemoral spurring.

In a February 8, 2021 report, Dr. Wardell diagnosed primary left knee joint arthritis. He utilized the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] Dr. Wardell referred to Table 16-3, page 511 of the A.M.A., *Guides* and noted that appellant had a Class 2 impairment for the class of diagnosis (CDX) of primary joint arthritis, for a 2.2 mm cartilage interval. He referred to Table 16-6, page 516, finding a grade modifier for functional history (GMFH) of 2; Table 16-7, page 517, finding a grade modifier for physical examination (GMPE) of 2; and Table 16-8, page 519, finding a grade

[3] A.M.A., *Guides* (6th ed. 2009).

modifier for clinical studies (GMCS) of 2. Dr. Wardell determined a net adjustment from a default grade of C and provided an impairment rating of 20 percent of the left lower extremity.

A March 1, 2021 MRI scan of the left knee read by Dr. Srinesh Alle, Board-certified in neuroradiology, demonstrated medial meniscus tear, negative for a lateral meniscal tear, collateral ligament tear, and cruciate ligament tear. It also demonstrated moderate chondromalacia involving the medial compartment, and mild chondromalacia involving the lateral and patellofemoral compartment. Dr. Alle noted that there was a parameniscal cyst measuring 3 mm adjacent to the posterior and medial meniscus.

On March 19, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

OWCP referred Dr. Wardell's February 8, 2021 report to a district medical adviser (DMA) for review. In a report dated March 27, 2021, Dr. David J. Slutsky, a Board-certified orthopedic surgeon serving as a DMA, reviewed the medical evidence of record. He explained that an impairment rating could not be performed because the report from Dr. Wardell was largely illegible. Dr. Slutsky also noted that the rating was based upon the diagnosis of arthritis of the knee, but the August 12 and October 10, 2019 diagnostic tests did not show any joint space narrowing. The DMA recommended further documentation to include a detailed history of appellant's current complaints, physical findings including palpation of the knee, and validated lower extremity range of motion (ROM), along with all imaging studies that documented osteoarthritis of the knees, including standing x-ray views. Dr. Slutsky advised that maximum medical improvement (MMI) would be determined after the additional information had been provided.

On March 31, 2021 OWCP provided a copy of the March 27, 2021 report from Dr. Slutsky, the DMA, and requested that Dr. Wardell, the treating physician, provide additional information. It afforded Dr. Wardell 30 days to respond.

In an April 14, 2021 report, Dr. Wardell noted that he had reviewed the DMA's findings and that he was enclosing his office notes. He related that, on multiple occasions, appellant had restricted ROM on examination, effusion, as well as joint line tenderness, and that his notes provided ample physical findings, including palpation of the knee and lower extremity ROM. Dr. Wardell noted that she had continued soreness and intermittent sharp pain over the medial knee and that she could not stand too long without being able to sit. He advised that appellant had undergone a functional capacity evaluation, which revealed significant limitations on activities that stress the knee, including climbing, squatting, and carrying. Dr. Wardell noted that he had rereviewed x-rays from January 20, 2021, which showed a 2.2 mm cartilage interval in the medial compartment that was consistent with operative and MRI scan findings.

On April 19, 2021 OWCP forwarded Dr. Wardell's report to the DMA for a supplemental report. In an April 29, 2021 report, Dr. Slutsky, the DMA, selected primary knee arthritis as the diagnosis for the diagnosis-based impairment (DBI) rating and noted that under the knee regional grid, a three mm cartilage interval would fall into the midrange default, for seven percent permanent impairment of the left lower extremity, pursuant to Table 16-3, page 511. The DMA found that neither a GMFH nor a GMPE were applicable, and that for GMCS the October 10, 2019

MRI scan revealed mild tri-compartmental degenerative osteoarthritis, pursuant to Table 16-8, page 519.[4] He applied the net adjustment formula, which resulted in a net adjustment of 0, and found that appellant had a seven percent permanent impairment of the left lower extremity. The DMA also reviewed Dr. Wardell's report and noted that Dr. Wardell did not discuss appellant's subjective findings, physical examination and ROM findings, and did not document how he determined a 2.2 mm cartilage interval, which had a midrange lower extremity impairment of 20 percent. He noted that the October 10, 2019 MRI scan revealed mild tricompartmental arthritis, but no measurement for the cartilage interval. The DMA also noted that the March 1, 2021 MRl scan revealed a collateral ligament tear and an anterior cruciate ligament tear, with moderate chondromalacia involving the medial compartment, and mild chondromalacia of the lateral patellofemoral compartment; however, there was no measurement of the cartilage interval. He opined that, based upon the MRI scan reports, it was more appropriate for appellant to be assigned to a Class 1, which consisted of a mild problem, according to Table 15-8, which is defined as a cartilage interval of less than 25 percent loss compared to the opposite side, and Table 16-3, page 511, for a 3 mm cartilage interval. The DMA noted that appellant reached MMI on February 8, 2021 the date of Dr. Wardell's evaluation.

By decision dated May 6, 2021, OWCP granted appellant a schedule award for seven percent permanent impairment of the left lower extremity (leg). The award ran for 20.16 weeks for the period April 10 through August 29, 2021.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing regulations[6] 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. However, FECA does not specify the manner in which the percentage of loss of a member shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants through its implementing regulations, OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[7] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[8] The Board has

[4] Dr. Slutsky indicated that functional history and physical examination adjustments were not applicable as there were no documented findings.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id.*; *see D.C.*, Docket No. 20-0916 (issued September 14, 2021); *see also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id*. Chapter 3.700.2 and Exhibit 1 (January 2010).

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.[9]

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*.[10] In evaluating lower extremity impairment, the sixth edition requires identifying the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[12]

ANALYSIS

The Board finds that this case is not in posture for decision.

In support of her claim for a schedule award, appellant submitted February 8 and April 14, 2021 reports from Dr. Wardell. In his February 8, 2021 report, Dr. Wardell diagnosed primary knee joint arthritis of the left knee, the CDX, and indicated that appellant had a Class 2 impairment based upon a 2.2, mm cartilage interval. In his April 14, 2021 report, Dr. Wardell indicated that he was enclosing his office notes. However, the Board finds that the record does not contain Dr. Wardell's notes. Dr. Wardell indicated that he had rereviewed January 20, 2021 x-rays which revealed a 2.2 mm cartilage interval; however, the Board notes that the record does not contain the January 20, 2021 x-rays. The March 27, 2021 report from the DMA recommended that further documentation be obtained from Dr. Wardell, including a detailed history of appellant's current complaints, physical findings including palpation of the knee, validated lower extremity ROM measurements, and all imaging studies that documented osteoarthritis of the knees, including standing x-ray views. If the DMA believes that the impairment has not been correctly described by the claimant's physician, the DMA should specify the missing information so that it can be requested and routed back to the DMA. If the missing information cannot be secured, a new or supplemental evaluation should be obtained.[13] As OWCP requested additional information and the treating physician did not provide the requested information, OWCP should have referred appellant for a second opinion examination. This is especially important as the schedule award was based on loss of cartilage interval and the record does not include the January 21, 2021 x-rays. Once OWCP undertakes to develop the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.[14]

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

[10] A.M.A., *Guides* 3 (6th ed. 2009).

[11] *Id*. at 494-531.

[12] *See M.P.*, Docket No. 18-1298 (issued April 12, 2019); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[13] Federal (FECA) Procedure Manual, Chapter 2.808, *supra* note 8.

[14] *See M.B.*, Docket No. 21-0060 (issued March 17, 2022); *D.S.*, Docket No. 19-0292 (issued June 21, 2019).

Accordingly, the Board finds that the case must be remanded to OWCP. On remand, OWCP shall refer the medical record, including an updated SOAF and Dr. Wardell's complete report of April 14, 2021, to the DMA for clarification regarding appellant's left lower extremity permanent impairment. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 25, 2023
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board