

**United States Department of Labor  
Employees' Compensation Appeals Board**

S.W., Appellant	)	
	)	
and	)	Docket No. 21-1227
	)	Issued: July 13, 2023
U.S. POSTAL SERVICE, MILWAUKEE	)	
PROCESSING & DISTRIBUTION CENTER,	)	
Milwaukee, WI, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 6, 2021 appellant filed a timely appeal from April 20, and July 20 and 21, 2021 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP abused its discretion in denying appellant's request for authorization of a combination bilateral lumbosacral hip femur orthosis; (2) whether appellant has met his burden of proof to establish disability from work for the period February 5 through September 25, 2020, causally related to his accepted May 7, 2018 employment injury; and (3) whether appellant has met his burden of proof to establish greater than 31 percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 8, 2018 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on May 7, 2018 he sustained a left leg injury when he was pushing a bulk mail container, and he strained his left leg while in the performance of duty. He stopped work on that date. OWCP initially accepted appellant's claim for intervertebral disc bulge at L4-5 and L5-S1, intervertebral lumbar disc disorders with lumbar radiculopathy, lumbar sprain and subsequently expanded the acceptance of his claim to include left hamstring sprain, left hip gluteal tendinitis, and left knee medial meniscus tear.

On June 18, 2018 appellant began working in a limited-duty position for four hours per day. OWCP paid him wage-loss compensation on the supplemental rolls, for disability from work for the remaining four hours of each workday, effective July 10, 2018.

Appellant stopped work on February 5, 2020. Commencing February 20, 2020, he filed claims for compensation (Form CA-7) for disability from work for the period February 1 through May 8, 2020.<sup>2</sup>

In a February 25, 2020 development letter, OWCP advised appellant that it was accepting his claim for 11.92 hours of disability for the period February 1 through 4, 2020, and 28 hours of disability from work during the period February 5 through 13, 2020, but was not accepting his claim that he had work-related total disability for each workday during this period. It advised him that additional evidence was needed to establish disability from work during the period claimed. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted a February 5, 2020 report from Dr. Francis M. Saigh, a Board-certified family medicine specialist, who indicated that he was totally incapacitated and unable to work from February 5 through March 16, 2020. Dr. Saigh noted, "[d]ue to this [appellant's] deteriorating work injury [appellant] is entirely unable to perform his normal or modified work duties. Please excuse [appellant] until further surgical intervention has been performed."

In a February 12, 2020 report, Dr. Adam I. Edelstein, a Board-certified orthopedic surgeon, reported physical examination findings and diagnosed left hip osteoarthritis, transient ischemic attacks, degenerative disc disease, and obesity. He described his discussion with appellant regarding upcoming left hip surgery.

In an undated report received by OWCP on March 18, 2020, Dr. Saigh noted that he was responding to the denial of appellant's claim for total disability during the period February 5 through 13, 2020. He maintained that appellant had a progressive condition, which had now caused him to be incapable of work. Dr. Saigh advised that appellant was unable to perform any form of "sit/stand alternating work in an effort to cease significant worsening of his condition." He advised that the range of motion (ROM) of appellant's left acetabulum was significantly

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<sup>2</sup> Appellant later filed Form CA-7 claims alleging disability from work for the period May 9 through September 25, 2020. After he underwent OWCP-authorized left hip surgery in late-September 2020, he also filed Form CA-7 claims alleging disability from work for the period September 26 through December 19, 2020.

reduced due to the added stress placed on the joint while performing even limited work. Appellant also displayed an altered gait favoring his right lower extremity and a positive Fabere's test, and his condition did not improve while he performed work. Dr. Saigh noted, "[i]n an effort to reduced [sic] any worsening of [appellant's] condition he has now received an off-duty status. To reiterate, this is not a worsening of the patient's condition, rather this is an effort to prevent any significant worsening of the patient's condition." He concluded that his report provided an explanation of why appellant was on off-duty status.

In an April 15, 2020 report, Dr. Saigh maintained that appellant's left knee, left hip, and back injuries, sustained at work in May 2018, worsened his left hip arthritis to the point that surgical intervention was needed.

On April 21, 2020 OWCP referred appellant's case to Dr. Kenechukwu Ugokwe, a Board-certified neurosurgeon serving as an OWCP district medical adviser (DMA). It requested, *inter alia*, that Dr. Ugokwe provide an opinion regarding whether appellant had disability commencing in February 2020 causally related to his accepted May 7, 2018 employment injury. In an April 30, 2020 report, Dr. Ugokwe opined that appellant failed to submit a rationalized medical opinion, supported by objective medical findings, which demonstrated that he had work-related disability commencing in February 2020.

By decision dated May 13, 2020, OWCP denied appellant's disability claim, finding that he failed to submit sufficient medical evidence to establish disability commencing February 5, 2020 and continuing. It noted, "[t]herefore, compensation claimed for the period(s) described herein is denied in accordance with 20 C.F.R. § 10.501 on the basis that the medical evidence of file does not establish that you were disabled as a result of your accepted work-related medical condition(s)."

On June 29, 2020 OWCP expanded the acceptance of appellant's claim to include aggravation of left hip osteoarthritis.

On August 19, 2020 OWCP received a request from Dr. Saigh, on appellant's behalf, for authorization of a combination bilateral lumbosacral hip femur orthosis. In an undated note received on that date, Dr. Saigh indicated that appellant's symptoms, which were related to a work injury, had improved since beginning treatment. He asserted that appellant currently was a candidate for a hip orthosis, and noted that braces and supports were used to support a weak or deformed body member, or to restrict or eliminate motion in a diseased or injured part of the body. Dr. Saigh maintained that payment may be made for rigid and semi-rigid braces and supports when prescribed by a physician, but that purchase of more than two of the same type of brace or support on the same day is considered not medically necessary.

On August 19, 2020 OWCP referred appellant's case to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as a DMA. It requested that he review the medical evidence of record and provide an opinion regarding whether the requested combination bilateral lumbosacral hip femur orthosis was necessary to treat the accepted May 7, 2018 employment injury.

In an August 31, 2020 report, Dr. Fellars indicated that Dr. Saigh recommended that, due to ongoing pain, appellant have a hip orthosis, *i.e.*, a brace, to help support his right hip. He

maintained, however, that documentation was not provided which explained specifically why the hip orthosis was necessary and how it would improve function or decrease pain. Dr. Fellars noted:

“I have read the opinion of Dr. Saigh from August 19, 2020. However, due to lack of information, I cannot agree that a hip orthosis is necessary. There is no documentation as to what expected functional benefit will occur with the use of the hip orthosis. There is no recently documented physical exam[ination] provided. Therefore, the requested hip orthosis would not be medically necessary.”

On September 3, 2020 OWCP requested that Dr. Saigh provide a report, with medical rationale, explaining why the requested combination bilateral lumbosacral hip femur orthosis was necessary to treat the accepted May 7, 2018 employment injury.

In an undated noted received by OWCP on September 14, 2020, Dr. Saigh indicated that appellant’s right knee injury had healed, and that he was currently “co[-]managing with orthopedics” in the effort to treat his left hip condition. He advised that efforts were being made to maintain proper muscle tone and allow appellant to continue to perform his activities of daily living. Dr. Saigh noted that appellant was currently unable to work due to his inability to lift, walk, and maneuver equipment. In an undated report received by OWCP on September 16, 2020, he advised that appellant’s lower back condition and left knee muscle tone continued to improve, but he needed additional care for muscle deconditioning in these areas. Dr. Saigh reported that treatment goals included increasing muscle tone of the lumbar spine and left leg, maintaining minimal subjective pain levels, and effectuating a return to work.

A report of September 11, 2020, x-rays of appellant’s left hip contained an impression of advanced osteoarthritis of the left hip. In late-September 2020, appellant underwent OWCP-authorized total left hip replacement surgery. OWCP paid him wage-loss compensation on the supplemental rolls, effective September 26, 2020. Appellant returned to work on December 22, 2020 without wage loss.

On February 12, 2021 OWCP referred appellant, along with a statement of accepted facts, the medical record, and series of questions, for a second opinion examination and evaluation with Dr. Mysore S. Shivaram, a Board-certified orthopedic surgeon. It requested that he evaluate appellant’s injury-related condition and provide an opinion regarding whether the requested combination bilateral lumbosacral hip femur orthosis was necessary to treat appellant’s May 7, 2018 employment injury.

In a March 3, 2021 report, Dr. Shivaram discussed appellant’s factual and medical history and reported his findings on physical examination. He noted that the examination of the back and lower extremities revealed normal configuration of the lumbar spine without tenderness due to palpation or spasm, as well as normal sensation and motor strength of the lower extremities. Dr. Shivaram found that all of appellant’s conditions related to the May 7, 2018 employment injury had resolved. He opined that the requested combination bilateral lumbosacral hip femur orthosis was not medically necessary, and would not alter the progressive arthritic process in appellant’s left hip. Dr. Shivaram noted that appellant underwent a total left hip replacement, and had experienced complete relief of left hip symptoms. He advised that appellant reported no right hip symptoms, and was working full duty without restrictions.

By decision dated April 20, 2021, OWCP denied appellant's request for authorization of combination bilateral lumbosacral hip femur orthosis.

In a June 9, 2021 report, Dr. Saigh provided physical examination findings, noting that the ROM of appellant's left hip was slightly reduced upon extension, internal rotation, and external rotation. He indicated that moderate muscle atrophy was noted in the left gluteal muscles, relative to the right, and there was 3/5 strength upon left hip extension and abduction. The Faber sign was positive for posterior joint pain, and there was a slight reduction of dermatomal sensation in the L3 and L4 nerve distributions. Dr. Saigh provided an opinion on the permanent impairment of appellant's left lower extremity under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> He utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-4 (Hip Regional Grid), page 515, the class of diagnosis (CDX) for appellant's total left hip replacement resulted in a Class 3 impairment with a default value of 37. Dr. Saigh assigned a grade modifier for functional history (GMFH) of 1 for antalgic limp; a grade modifier for physical examination (GMPE) of 1 for mild palpatory findings; and a grade modifier for clinical studies (GMCS) of 2 for femoral osteotomy in good position. He utilized the net adjustment formula,  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 3) + (1 - 3) + (2 - 3) = -5$ , which resulted in a grade A or 31 percent permanent impairment of the left extremity.

OWCP referred appellant's case to Dr. Nathan Hammel, a Board-certified family medicine specialist serving as a DMA, and requested that he review the evidence of record, including the Dr. Saigh's July 2021 report, and provide an opinion on the permanent impairment of appellant's left lower extremity.

In a July 15, 2021 report, Dr. Hammel indicated that appellant's most recent physical examination revealed mild weakness and mild reduction in ROM of the left hip. He referred to the sixth edition of the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 16-4, page 515, the CDX for appellant's total left hip replacement (fair surgery result and mild motion deficits) resulted in a Class 3 impairment with a default value of 37. Dr. Hammel assigned a GMFH of 1 for continued pain and a GMPE of 1 for mild loss of motion. He found that a GMCS was not applicable as the clinical studies were used to establish the CDX. Dr. Hammel utilized the net adjustment formula,  $(GMFH - CDX) + (GMPE - CDX) = (1 - 3) + (1 - 3) = -4$ , which resulted in a grade A or 31 percent permanent impairment of the left lower extremity.

By decision dated July 20, 2021, OWCP granted appellant a schedule award for 31 percent permanent impairment of his left lower extremity. The award ran for 89.28 weeks from June 9, 2021 through February 23, 2023 and was based on the July 15, 2021 report of Dr. Hammel, who evaluated the June 9, 2021 findings of Dr. Saigh.

On June 3, 2020 appellant requested reconsideration of the May 13, 2020 decision.

By decision dated July 21, 2021, OWCP denied modification of its May 13, 2020 decision.

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

## LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of FECA states in pertinent part: “The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.”<sup>4</sup>

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>5</sup> The only limitation on OWCP’s authority is that of reasonableness.<sup>6</sup> Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>7</sup> In order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.<sup>8</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>9</sup>

## ANALYSIS -- ISSUE 1

The Board finds that OWCP did not abuse its discretion in denying appellant’s request for authorization of a combination bilateral lumbosacral hip femur orthosis.

In a March 3, 2021 report, Dr. Shivaram, an OWCP referral physician, found that all of appellant’s conditions related to the May 7, 2018 employment injury had resolved. He opined that the requested combination bilateral lumbosacral hip femur orthosis was not medically necessary and would not alter the progressive arthritic process in appellant’s left hip. Dr. Shivaram noted that appellant underwent a total left hip replacement and had experienced complete relief of left hip symptoms. He advised that appellant reported no right hip symptoms, and was working on full duty without restrictions.

The Board finds that the weight of the medical opinion evidence with respect to appellant’s request for authorization of a combination bilateral lumbosacral hip femur orthosis rests with the well-rationalized opinion of Dr. Shivaram. Dr. Shivaram conducted a complete physical examination of appellant, and based his opinion on an accurate factual and medical history. He discussed appellant’s bilateral hip condition, and explained that the level of symptoms did not warrant the use of a combination bilateral lumbosacral hip femur orthosis. Moreover,

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<sup>4</sup> 5 U.S.C. § 8103.

<sup>5</sup> *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000).

<sup>6</sup> *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

<sup>7</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Rosa Lee Jones*, 36 ECAB 679 (1985).

<sup>8</sup> *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

<sup>9</sup> *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

Dr. Shivaram noted that the device would not alter the progressive arthritic process in appellant's left hip. His evaluation of the need for a combination bilateral lumbosacral hip femur orthosis is the most comprehensive in the case record.

The Board notes that Dr. Saigh is the physician who initially recommended that appellant receive authorization for a combination bilateral lumbosacral hip femur orthosis. In an undated note, Dr. Saigh advised that braces and supports were used to support a weak or deformed body member, or to restrict or eliminate motion in a diseased or injured part of the body. However, this report is of limited probative value with respect to appellant's request for authorization of a combination bilateral lumbosacral hip femur orthosis, because it contains an opinion which is conclusory in nature and lacking in adequate medical rationale. Dr. Saigh did not discuss specific findings on examination and/or diagnostic testing which would support the need for such a device to treat appellant's May 7, 2018 employment injury. Therefore, this report did not establish the need for a combination bilateral lumbosacral hip femur orthosis.<sup>10</sup>

For the above-noted reasons, OWCP properly denied appellant's request for authorization of the device.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>11</sup>

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>12</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>13</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>14</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical

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<sup>10</sup> See *C.E.*, Docket No. 19-0192 (issued July 16, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

<sup>11</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>12</sup> 20 C.F.R. § 10.5(f).

<sup>13</sup> See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>14</sup> See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.<sup>15</sup>

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.<sup>16</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met his burden of proof to establish disability from work for the period February 5 through September 25, 2020 causally related to his accepted May 7, 2018 employment injury.

Appellant submitted a February 5, 2020 report from Dr. Saigh, who indicated that appellant was totally incapacitated and unable to work from February 5 through March 16, 2020. Dr. Saigh noted, “[d]ue to this [appellant’s] deteriorating work injury he is entirely unable to perform his normal or modified work duties. Please excuse [appellant] until further surgical intervention has been performed.” The Board finds that this report is of limited probative value regarding his disability claim because Dr. Saigh did not support his opinion by making reference to objective examination and/or diagnostic testing findings, explaining how they were related to the accepted May 7, 2018 employment injury and caused total disability. The Board has held that reports that do not contain medical rationale explaining how the accepted employment injury caused or contributed to the claimed disability are of limited probative value regarding causal relationship.<sup>18</sup> Therefore, Dr. Saigh’s February 5, 2020 report is insufficient to establish appellant’s claim.

In an undated report received by OWCP on March 18, 2020, Dr. Saigh maintained that appellant had a progressive condition which had now caused him to be incapable of work. He noted, “[i]n an effort to reduce any worsening of his condition he has now received an off-duty status. To reiterate, this is not a worsening of the patient’s condition, rather this is an effort to prevent any significant worsening of the patient’s condition.” In an April 15, 2020 report, Dr. Saigh maintained that appellant’s left knee, left hip, and back injuries, sustained at work in May 2018, worsened his left hip arthritis to the point that surgical intervention was needed. In an

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<sup>15</sup> See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>16</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>17</sup> *K.A.*, Docket No. 19-1564 (issued June 3, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>18</sup> See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).



undated noted received by OWCP on September 14, 2020 he indicated that appellant was currently unable to work due to his inability to lift, walk, and maneuver equipment. In an undated report received by OWCP on September 16, 2020, Dr. Saigh reported that treatment goals included increasing muscle tone of the lumbar spine and left leg, maintaining minimal subjective pain levels, and effectuating a return to work.

Dr. Saigh's reports are of no probative value regarding appellant's disability claim because he did not provide an opinion that appellant's disability was causally related to his accepted May 7, 2018 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>19</sup> Therefore, these reports are insufficient to establish appellant's claim.

In a February 12, 2020 report, Dr. Edelstein diagnosed left hip osteoarthritis, transient ischemic attacks, degenerative disc disease, and obesity. He noted that appellant would undergo hip surgery. However, this report is of no probative value because Dr. Edelstein did not provide an opinion regarding the period of claimed disability.<sup>20</sup>

As the medical evidence of record is insufficient to establish disability from work for the period February 5 through September 25, 2020, causally related to the accepted May 7, 2018 employment injury, the Board finds that appellant has not met his burden of proof to establish his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 3**

The schedule award provisions of FECA<sup>21</sup> and its implementing federal regulations<sup>22</sup> 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 shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has

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<sup>19</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>20</sup> See *id.*

<sup>21</sup> 5 U.S.C. § 8107.

<sup>22</sup> 20 C.F.R. § 10.404.

concurrent with such adoption.<sup>23</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>24</sup>

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that diagnosis-based impairment is the primary method of calculation for the lower limb and that most impairments are based on the diagnosis-based impairment where impairment class is determined by the diagnosis and specific criteria as adjusted by the grade modifiers for functional history, physical examination, and clinical studies. It further provides that alternative approaches are also provided for calculating impairment for ROM, peripheral nerve deficits, complex regional pain syndrome, and amputation. ROM is primarily used as a physical examination adjustment factor.<sup>25</sup> The A.M.A., *Guides*, however, also explain that some of the diagnosis-based grids refer to the ROM section when that is the most appropriate mechanism for grading the impairment. This section is to be used as a stand-alone rating when other grids refer to this section or no other diagnosis-based sections of the chapter are applicable for impairment rating of a condition.<sup>26</sup>

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the hip, reference is made to Table 16-4 (Hip Regional Grid) beginning on page 512.<sup>27</sup> After the CDX is determined from the Hip Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>28</sup> Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>29</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that appellant has not met his burden of proof to establish greater than 31 percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

In a July 15, 2021 report, Dr. Hammel, the DMA, provided an opinion that appellant had 31 percent permanent impairment of the left lower extremity. He indicated that appellant's most

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<sup>23</sup> *Id.*; see *V.J.*, Docket No. 1789 (issued April 8, 2020); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>24</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>25</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009) 497, section 16.2.

<sup>26</sup> *Id.* at 543; see also *M.D.*, Docket No. 16-0207 (issued June 3, 2016); *D.F.*, Docket No. 15-0664 (issued January 8, 2016).

<sup>27</sup> *Id.* at 512-15.

<sup>28</sup> *Id.* at 515-22.

<sup>29</sup> *Id.* at 23-28.

recent physical examination revealed mild weakness and mild reduction in ROM of the left hip. Dr. Hammel referred to the sixth edition of A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 16-4, page 515, the CDX for appellant's total left hip replacement resulted in a Class 3 impairment (fair surgery result and mild motion deficits) with a default value of 37. He assigned a GMFH of 1 for continued pain and a GMPE of 1 for mild loss of motion. Dr. Hammel found that a GMCS was not applicable as the clinical studies were used to establish the CDX. He utilized the net adjustment formula,  $(GMFH - CDX) + (GMPE - CDX) = (1 - 3) + (1 - 3) = -4$ , which resulted in a grade A or 31 percent permanent impairment of the left lower extremity.

The Board finds that Dr. Hammel properly evaluated the June 9, 2021 findings of Dr. Saigh and applied the standards of the sixth edition of the A.M.A., *Guides* to determine that appellant had 31 percent permanent impairment of the left lower extremity. Dr. Hammel cited the appropriate sections of the A.M.A., *Guides* and provided reasoning for his rating choices, including his choice of appellant's CDX and grader modifiers.<sup>30</sup> Dr. Saigh also calculated on June 9, 2021 that appellant had 31 percent permanent impairment of the left lower extremity.<sup>31</sup> The case record does not contain an impairment rating demonstrating that appellant has greater than 31 percent permanent impairment of that extremity.

As the medical evidence of record established that appellant has no greater permanent impairment of the left lower extremity for which he previously received a schedule award, the Board finds that he has not met his burden of proof.

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

### CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of a combination bilateral lumbosacral hip femur orthosis. The Board further finds that he has not met his burden of proof to establish disability from work for the period February 5 through September 25, 2020, causally related to his accepted May 7, 2018 employment injury. The Board also finds that appellant has not met his burden of proof to establish greater than 31 percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

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<sup>30</sup> See *supra* note 28.

<sup>31</sup> Dr. Saigh found a CDX of Class 3 and, therefore, he made an error when he utilized the net adjustment formula as follows:  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 2) + (1 - 2) + (2 - 2) = -2$ . Given the CDX of Class 3, the calculation should have been as follows:  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 3) + (1 - 3) + (2 - 3) = -5$ . However, under Table 16-4, both calculations would result in a final determination that appellant had 31 percent permanent impairment of the left lower extremity. See A.M.A., *Guides* 515, Table 16-4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 20, and July 20 and 21, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 13, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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