

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

A.F., Appellant	)	
	)	
and	)	Docket No. 23-0325
	)	Issued: July 28, 2023
U.S. POSTAL SERVICE, NORTH METRO	)	
GEORGIA PROCESSING & DISTRIBUTION	)	
CENTER, Duluth, GA, 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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 3, 2023 appellant filed a timely appeal from a December 12, 2022 merit decision 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.<sup>2</sup>

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

<sup>2</sup> The Board notes that, following the December 12, 2022 decision, appellant submitted additional evidence to OWCP and with her appeal to the Board. 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 21 percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 19, 2017 appellant, then a 50-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2017 she bruised her left knee when she struck her left knee on a low rail of a gate while in the performance of duty. She stopped work on March 3, 2017. OWCP accepted the claim for left knee contusion and left knee sprain. It paid appellant wage-loss compensation on the supplemental rolls, effective March 3, 2017, and on the periodic rolls, effective April 2, 2017. By decision dated May 9, 2017, OWCP expanded the acceptance of her claim to include derangement of the anterior horn of the left lateral meniscus. Appellant retired due to disability, effective June 25, 2018.

In a letter dated August 26, 2021, appellant, through counsel, filed a claim for compensation (Form CA-7) for a schedule award.

Appellant submitted a July 8, 2021 report from Dr. Ralph D'Auria, a Board-certified physiatrist, who reviewed the history of the January 16, 2017 employment injury and indicated that her claim was accepted for left knee contusion, left knee sprain, and derangement of anterior horn of lateral meniscus of the left knee. Dr. D'Auria indicated that, in December 2020, she underwent left total knee arthroplasty and x-ray examination of the left knee showed interval placement of the left total knee arthroplasty in good position. On examination, he noted that appellant walked with a mild limp, favoring the left knee. Dr. D'Auria reported left knee physical examination findings of tenderness on palpation to the patellar tendon, and pain on passive displacement of the patella. Range of motion (ROM) was limited at right flexion and left flexion. Dr. D'Auria noted that appellant had reached maximum medical improvement (MMI) as of that date. He referenced the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)<sup>4</sup> and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3, (Knee Regional Grid -- Lower Extremity Impairments), page 511, appellant had a Class 2 impairment, which resulted in a default value of 25 percent, based on total knee replacement with good result. Dr. D'Auria assigned a grade modifier for functional history (GMFH) of 1 for antalgic limp and a grade modifier for physical examination (GMPE) of 1 for ROM. He indicated that a grade modifier for clinical

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<sup>3</sup> Docket No. 19-0453 (issued July 6, 2020). By decision dated July 6, 2020, the Board reversed the November 28, 2018 OWCP decision, finding that OWCP had not met its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits pursuant to 5 U.S.C. § 8106(c)(2).

<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

studies (GMCS) was not applicable. Dr. D'Auria applied the net adjustment formula  $(1-2) + (1-2) = -2$ , which resulted in a final rating of 21 percent permanent impairment of the left lower extremity.

On May 18, 2022 appellant filed another Form CA-7 for a schedule award.

In a June 9, 2022 development letter, OWCP requested that appellant submit an impairment rating report, which applied the standards of the sixth edition of the A.M.A., *Guides*. It afforded her 30 days to submit the requested evidence.

On November 3, 2022 OWCP forwarded Dr. D'Auria's July 8, 2021 report, along with a statement of accepted facts (SOAF), to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), for review and opinion on the extent of any employment-related permanent impairment of appellant's left lower extremity under the A.M.A., *Guides*. In a November 8, 2022 report, Dr. Katz indicated that he had reviewed the SOAF and the medical record, including Dr. D'Auria's July 8, 2021 report. He agreed with Dr. D'Auria's opinion that appellant had 21 percent permanent impairment of the left lower extremity. Dr. Katz determined that, under the DBI rating method of the A.M.A., *Guides*, the appropriate Class was 2, with a default value of 25 percent, for good result following a total knee replacement. He assigned a GMFH of 1 and a GMPE of 1. After applying the net adjustment formula,  $(1-2) + (1-2) = -2$ , Dr. Katz determined that appellant had a final impairment of 21 percent permanent impairment of the left lower extremity. He also reported that the accepted conditions of her claim were not eligible for the alternative ROM rating methodology under the A.M.A., *Guides*.

By decision dated December 12, 2022, OWCP granted appellant a schedule award for 21 percent permanent impairment of her left lower extremity. The schedule award ran for 60.48 weeks from May 2, 2018 through June 29, 2019 and was based on Dr. D'Auria's July 8, 2021 and the DMA's November 8, 2022 reports.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>5</sup> and its implementing regulations<sup>6</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. FECA, however, 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has concurred in such

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

adoption.<sup>7</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.<sup>8</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 knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.<sup>9</sup> After the class of diagnosis (CDX) is determined from the Knee 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>10</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>11</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 21 percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

On July 8, 2021 Dr. D'Auria provided an accurate history of injury and noted the accepted conditions of left knee contusion, left knee sprain, and derangement of anterior horn of lateral meniscus of the left knee. He indicated that appellant underwent left total knee arthroplasty and that diagnostic testing showed interval placement of the left total knee arthroplasty in good position. Dr. D'Auria provided examination findings and noted that she had reached MMI as of that date. Utilizing the A.M.A., *Guides*<sup>13</sup> and the DBI rating method, he determined that appellant had a Class 2 impairment under Table 16-3, (Knee Regional Grid), which resulted in a default value of 25 percent, based on a good result following a total knee replacement. Dr. D'Auria

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<sup>7</sup> *Id.* at § 10.404 (a); *see also T.T.*, Docket No. 18-1622 (issued May 14, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

<sup>9</sup> *See A.M.A., Guides* (6<sup>th</sup> ed. 2009), 509-11.

<sup>10</sup> *Id.* at 515-22.

<sup>11</sup> *Id.* at 23-28.

<sup>12</sup> *Supra* note 8 at Chapter 2.808.6(f) (March 2017).

<sup>13</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

assigned grade modifiers and applied the net adjustment formula, in order to determine that she had a final impairment of 21 percent permanent impairment of the left lower extremity.

On November 8, 2022 the DMA reviewed Dr. D'Auria's July 8, 2018 impairment rating report and concurred with his finding that appellant had 21 percent permanent impairment of the left lower extremity due to her accepted left knee injury. The Board has reviewed the DMA's rating, and finds that he properly applied the appropriate tables and grading schedules to the findings from Dr. D'Auria's report, pursuant to the A.M.A., *Guides*.<sup>14</sup> The DMA properly utilized the DBI rating method to find that, under Table 16-3 (Knee Regional Grid), appellant was a Class 2 impairment for good result following a total knee replacement, which resulted in a default value of 25 percent. He assigned a GMFH of 1 and a GMPE of 1 and applied the net adjustment formula, which resulted in a final impairment of 21 percent permanent impairment of the left lower extremity.

Accordingly, the Board finds that, as appellant has not submitted medical evidence establishing greater than 21 percent permanent impairment of the left lower extremity, she has not met her burden of proof. 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 permanent impairment.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than 21 percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

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<sup>14</sup> See A.S., Docket No. 22-0930 (issued January 19, 2023); see also R.S., Docket No. 21-0833 (issued January 25, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2023  
Washington, DC

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

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

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