

FACTUAL HISTORY

This case has previously been before the Board on a different issue. The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference.³ The relevant facts are as follows.

On April 8, 1974 appellant, then a 26-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a right knee injury when he struck his right knee on the door latch of his postal vehicle while in the performance of duty. OWCP accepted the claim for right knee synovitis and internal derangement of the right knee. On July 9, 1979 appellant underwent right knee patellectomy. He returned to light-duty work on December 21, 1979. Appellant stopped work on August 15, 1997.⁴

In a report dated August 1, 2018, Dr. R. William Junius III, a Board-certified orthopedic surgeon, described appellant's history of injury, his medical history, and diagnosed unilateral primary osteoarthritis of the right knee and knee pain. He noted, "[Appellant] was given a 15 percent permanent residual disability ... on June 26, 1980." On physical examination, Dr. Junius noted that appellant was in a wheelchair, but could walk short distances. He found right knee swelling, genu varum deformity, and moderate effusion. Dr. Junius listed range of motion as -10 degrees of extension and 90 degrees of flexion with pain at the extreme limits. He reviewed right knee side x-rays and found that these demonstrated severe bone-on-bone medial compartment arthritis with periarticular osteophyte formation, subchondral sclerosis, and varus deformity. Dr. Junius also found significant joint space narrowing with osteophyte formation in the patellofemoral joint. He calculated appellant's impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁵ applying Table 16-3 (Knee Regional Grid) page 511, for the diagnosis-based impairment (DBI) method of primary knee joint arthritis, Class 4, grade D, or 54 percent permanent impairment based on no cartilage interval.

On July 13, 2018 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

OWCP referred Dr. Junius' August 1, 2018 report to a district medical adviser (DMA) for review. In a report dated July 15, 2021, Dr. Herbert White, Jr., a physician Board-certified in occupational medicine serving as a DMA, reviewed the medical evidence of record. He explained that the rating was based upon the class of diagnosis (CDX) of significant medial compartment osteoarthritis of the knee and that appellant had zero millimeter cartilage interval. The DMA found that in accordance with Table 16-3, page 511 of the A.M.A., *Guides*, and the CDX of primary knee

³ *Charles J. Jenkins*, 40 ECAB 362 (1988).

⁴ Appellant subsequently filed an occupational disease claim (Form CA-2) alleging an emotional condition due to factors of his federal employment. OWCP assigned that claim File No. xxxxxx279 and accepted it for a aggravation of a preexisting paranoid personality disorder. Appellant stopped work due to this condition on August 15, 1997. OWCP paid wage-loss compensation on the supplemental rolls beginning June 16, 2002 and on the periodic rolls beginning September 28, 2020.

⁵ A.M.A., *Guides* (6th ed. 2009).

joint arthritis, there was a default value of 50 percent due to 0 millimeters of cartilage interval. He also applied Table 16-6, page 516, in finding a grade modifier for functional history (GMFH) of 4, as appellant was nonambulatory; and applied Table 16-7, page 517, in finding a grade modifier for physical examination (GMPE) of 2, due to moderate palpatory findings. The DMA noted that he did not provide an additional adjustment for the grade modifier for clinical studies (GMCS) as the clinical studies were used to determine the class of impairment. He applied the net adjustment formula, page 521, to reach a net adjustment of -2 or “in a class for grade A impairment,” resulting in 50 percent lower extremity permanent impairment. The DMA also applied Table 16-23, Knee Motion Impairments, and found 20 percent impairment of the right lower extremity due to loss of range of motion (ROM). He concluded that as the DBI method was greater, appellant’s permanent impairment for schedule award purposes was 50 percent permanent impairment of the right lower extremity. The DMA noted: “The 50 percent lower extremity impairment is the total impairment present. It would not be awarded in addition to any previously paid impairment.”

By decision dated August 18, 2021, OWCP granted appellant a schedule award for 50 percent permanent impairment of the right lower extremity. The award ran for a period of 144 weeks from May 3, 2021 through February 4, 2024 based on the findings of Dr. Junius and the DMA.

LEGAL PRECEDENT

The schedule award provisions of FECA⁶ and its implementing regulations⁷ 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.⁸ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (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*

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.*; see D.C., Docket No. 20-0916 (issued September 14, 2021); see also Ronald R. Kraynak, 53 ECAB 130 (2001).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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

and Health.¹¹ In evaluating lower extremity impairment, the sixth edition requires identifying the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.¹² 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.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 50 percent permanent impairment of the right lower extremity, for which he previously received a schedule award.

In a report dated August 1, 2018, Dr. Junius reviewed the medical record and the results of a physical examination. Referring to the sixth edition A.M.A., *Guides* Table 16-3, he rated appellant using the DBI method for a total right lower extremity permanent impairment of class 4, grade D or 54 percent permanent impairment of the right lower extremity, due to no cartilage interval. Dr. Junius did not provide grade modifiers or the net adjustment formula as prescribed by the A.M.A., *Guides*.

In his July 15, 2021 report, Dr. White discussed appellant's factual and medical history with respect to his accepted right knee conditions. He disagreed with Dr. Julius' impairment rating. Using the sixth edition of the A.M.A., *Guides*, Dr. White found a GMFH of 4 for a very severe problem as appellant was nonambulatory, a GMPE of 2 for tenderness to palpation, and that the GMCS was inapplicable as it was used to determine the class of impairment. He applied the net adjustment formula to arrive at a final right lower extremity permanent impairment of 50 percent, or Grade A.

The Board finds that OWCP properly relied on the opinion of Dr. White, serving as the DMA, as he appropriately applied the sixth edition of the A.M.A., *Guides* in determining that appellant had no greater than 50 percent permanent impairment of the right lower extremity.

As appellant has not established greater than 50 percent permanent impairment of the right lower extremity, for which he previously received a schedule award, the Board finds 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 a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

¹¹ A.M.A., *Guides* 3 (6th ed. 2009).

¹² *Id.* at 494-531.

¹³ *See M.P.*, Docket No. 18-1298 (issued April 12, 2019); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 50 percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2023
Washington, DC

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

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

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