



## **FACTUAL HISTORY**

On May 3, 2021 appellant, then a 26-year-old human resource specialist, filed a traumatic injury claim (Form CA-1) alleging that on April 27, 2021 she dislocated her left knee when she tripped and fell over a small trash can while in the performance of duty. She stopped work on April 27, 2021 and returned to light-duty work on May 14, 2021.

On April 27, 2021 appellant was transported to a hospital emergency room and Dr. William M. Roethel, a physician specializing in emergency medicine, reduced the lateral dislocation of her left patella under sedation and verified this result by x-ray. On May 5, 2021 she underwent additional left knee x-rays which revealed that the patella was reduced with no fractures or loose bodies and on May 22, 2021 she underwent a magnetic resonance imaging (MRI) scan of the left knee which demonstrated changes compatible with a history of recent patellar dislocation including extensive marrow contusion/microtrabecular fracture of the medial patella and lateral femoral condyle and partial tear of the medial retinaculum and medial patellofemoral ligament.

OWCP accepted the claim for acute patellar dislocation left knee. It paid wage-loss compensation on the supplemental rolls beginning June 14, 2021.

In an August 27, 2021 note, appellant's attending physician, Dr. Alan L. Altman, a physician specializing in orthopedic surgery, opined that she had reached maximum medical improvement (MMI) with regard to her accepted left patella dislocation. He recommended a permanent impairment rating.

On October 12, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated November 3, 2021, OWCP requested that appellant provide a medical report from her treating physician, which included an impairment rating utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> It afforded her 30 days to submit the requested information.

On February 18, 2022 OWCP referred appellant, along with the case record and a statement of accepted facts (SOAF), for a second opinion examination and evaluation with Dr. Matthew B. Gavin, a Board-certified orthopedic surgeon. It requested that Dr. Gavin provide an opinion on appellant's lower extremity permanent impairment under the standards of the sixth edition of the A.M.A., *Guides*.

In an April 28, 2022 report, Dr. Gavin detailed appellant's factual and medical history, and reported the findings of his physical examination. He found full range of motion (ROM) of the left knee, hyperextension of both knees, mild patellar hypermobility, positive patellar compression on the left with some clicking with active ROM, and atrophy of the left thigh. Dr. Gavin reported that sunrise x-rays revealed a patellar tilt. He diagnosed patellofemoral pain left knee, status post left patellar dislocation, generalized ligamentous laxity, and atrophy of the left thigh. Dr. Gavin determined that appellant had not yet reached MMI as she had persistent weakness of the left lower

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed 2009).

extremity which increased pressure and discomfort behind her patella. He recommended continuing strengthening exercises. Dr. Gavin further estimated that appellant's permanent impairment of the left lower extremity was seven percent due to left patella dislocation with mild instability and persistent pain and weakness in accordance with the A.M.A., *Guides*, Table 16-3 (Knee Regional Grid -- Lower Extremity Impairments), diagnosis-based impairment (DBI) rating method, page 510.

On May 19, 2022 OWCP referred appellant's case to Dr. James W. Butler, a physician Board-certified in occupational medicine, serving as an OWCP district medical adviser (DMA), and requested that he provide an opinion regarding Dr. Gavin's findings. In an October 3, 2022 report, Dr. Butler determined that appellant reached MMI as recent x-rays demonstrated that the dislocated patella had resolved. He provided an assessment of her lower extremity permanent impairment finding subjective complaints, but no objective findings or evidence of instability. Dr. Butler concluded that appellant had zero percent permanent impairment of the left lower extremity in accordance with the DBI rating method of the A.M.A., *Guides*, Table 16-3, page 510, which provides that a patellar dislocation with no instability is a Class 0, with no ratable impairment. He disagreed with Dr. Gavin's seven percent permanent impairment rating because the April 28, 2022 report did not include findings of instability. Dr. Butler further found that as appellant had no loss of ROM of the left knee, and no ratable impairment in accordance with the ROM rating method of the A.M.A., *Guides*, Table 16-23 (Knee Motion Impairments) page 549.

By decision dated May 5, 2023, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>3</sup> and its implementing federal regulations,<sup>4</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 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.<sup>5</sup> The Board has approved the use by

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6<sup>th</sup> ed. 2009); 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, Exhibit 1 (January 2010).

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.<sup>6</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 GMFH, GMPE, and GMCS. It further provides that alternative approaches are also provided for calculating impairment for peripheral nerve deficits, complex regional pain syndrome, amputation, and ROM. ROM is primarily used as a physical examination adjustment factor.<sup>7</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>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 knees, reference is made to Table 16-3 (Knee Regional Grid).<sup>9</sup> Under each table, after the CDX is determined and a default grade value is identified, 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>

### ANALYSIS

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

In an April 28, 2022 report, Dr. Gavin, an OWCP referral physician, provided his findings on physical examination including left thigh atrophy, mild patellar hypermobility, and positive patellar compression on the left with some clicking with active range of motion. He also noted that sunrise x-rays demonstrated patellar tilt. Dr. Gavin opined both that appellant had not reached MMI and that she had seven percent permanent impairment of her left lower extremity in

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<sup>6</sup> *A.W.*, Docket No. 22-1075 (issued April 10, 2023); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>7</sup> *Supra* note 2 at 497, section 16.2.

<sup>8</sup> *Id.* at 543; *see also N.B.*, Docket No. 22-1295 (issued May 25, 2023); *M.D.*, Docket No. 16-0207 (issued June 3, 2016); *D.F.*, Docket No. 15-0664 (issued January 8, 2016).

<sup>9</sup> A.M.A., *Guides* 509-11.

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

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

accordance with the DBI rating method of the A.M.A., *Guides*. The Board finds that Dr. Gavin's opinion on permanent impairment requires clarification.

The Board has held that, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>12</sup> Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.<sup>13</sup> Once it starts to procure medical opinion evidence, it must do a complete job in securing from its referral physician an opinion, which adequately addresses the relevant issues.<sup>14</sup>

The Board has reviewed Dr. Gavin's April 28, 2022 report and has identified several issues. Dr. Gavin did not provide a detailed calculation, utilizing Table 16-3 (Knee Regional Grid) on page 510 of the A.M.A., *Guides*, to find appellant's percentage of permanent impairment of the left lower extremity due to patellar dislocation. He did not explain how his findings on physical examination supported mild instability as required by a Class 1, grade C DBI rating method for patellar dislocation of seven percent permanent impairment. Furthermore, Dr. Gavin failed to explain why he believed appellant had not reached MMI and if she was not at MMI, why he provided a permanent impairment rating.

The case must, therefore, be remanded for clarification from Dr. Gavin regarding the above-noted issues with his permanent impairment evaluation of appellant's left lower extremity. If Dr. Gavin is unable to clarify or elaborate on his previous reports, or if the supplemental report is also vague, speculative, or lacking rationale, OWCP must submit the case record and a detailed SOAF to a new second opinion physician for the purpose of obtaining a rationalized medical opinion on the issue.<sup>15</sup> After this and such other 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.

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<sup>12</sup> See *J.W.*, Docket No. 22-0223 (issued August 23, 2022); *D.V.*, Docket No. 17-1590 (issued December 12, 2018); *Russell F. Polhemus*, 32 ECAB 1066 (1981).

<sup>13</sup> See *J.W.*, *id.*; *A.K.*, Docket No. 18-0462 (issued June 19, 2018); *Robert F. Hart*, 36 ECAB 186 (1984).

<sup>14</sup> *T.B.*, Docket No. 20-0182 (issued April 23, 2021); *L.V.*, Docket No. 17-1260 (issued August 1, 2018); *Mae Z Hackett*, 34 ECAB 1421, 1426 (1983).

<sup>15</sup> *J.W.*, *supra* note 12; *J.H.*, Docket No. 19-1476 (issued March 23, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 5, 2023 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: November 29, 2023  
Washington, DC

Alec J. Koromilas, 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