United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 23-0271**
	)	**Issued: September 18, 2023**
U.S. POSTAL SERVICE, ALBANY POST OFFICE, Albany, NY, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On December 12, 2022 appellant filed a timely appeal from an August 16, 2022 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 August 16, 2022 decision, appellant submitted additional evidence to OWCP. 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 new evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 16 percent permanent impairment of each lower extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

On September 1, 2020 appellant, then a 42-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral knee osteoarthritis due to factors of his federal employment. He noted that he first became aware of his condition and realized its relation to his federal employment on August 18, 2020. OWCP accepted appellant's claim for permanent aggravation of bilateral primary osteoarthritis of the knee. Appellant did not stop work.

On October 8, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award. In support of his claim, he submitted reports dated August 2 and 27, 2021 from Dr. David J. Barnes, an osteopath and Board-certified family medicine specialist.

In a development letter dated October 14, 2021, OWCP indicated that the August 2 and 27, 2021 reports from Dr. Barnes were partially legible. It requested that appellant submit a permanent impairment evaluation from his attending physician in accordance with the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] OWCP afforded him 30 days to submit the requested evidence.

In medical reports dated August 2 and 27, 2021, Dr. Barnes noted that appellant previously sustained a torn meniscus in his right knee in 1999 and underwent arthroscopic surgery. Thereafter, appellant experienced right knee pain and swelling and underwent conservative treatment including a knee brace and synvisc injections. Dr. Barnes noted that, in 2013, appellant began working as a letter carrier, which required walking approximately 11 miles a day while regularly carrying 30 to 35 pounds in appellant's satchel, and appellant reported experiencing severe left knee pain that mirrored his right knee pain. In 2017 appellant began working as a motor vehicle trainer, which required standing all day on pavement. Dr. Barnes noted findings on physical examination of antalgic gait, pain in the medial and lateral portion of both knees, moderate tenderness upon palpation to the medial portion of the knees, decreased range of motion of the knees with flexion and extension, positive varus and valgus test bilaterally, and positive McMurray test bilaterally. He noted that x-rays revealed considerable narrowing of the medial joint line with only two millimeters (mm) of articular surface interval medially. Dr. Barnes diagnosed unilateral primary osteoarthritis of both knees and noted that appellant had reached maximum medical improvement (MMI) on August 2, 2021.

Dr. Barnes referred to the sixth edition of the A.M.A., *Guides* and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid), page 511, the class of diagnosis (CDX) for appellant's joint arthritis in each knee, which was measured at a two mm cartilage interval, resulted in a Class 2 impairment with a default value of 20 percent. He assigned a grade modifier for functional history (GMFH) of 2, a grade modifier for physical

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

examination (GMPE) of 2, and a grade modifier for clinical studies (GMCS) of 2. Dr. Barnes utilized the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (2-2) + (2-2) + (2-2) = 0, which resulted in no movement from the 20 percent default value and therefore appellant had 20 percent permanent impairment of each lower extremity due to primary knee joint arthritis.

On December 17, 2021 OWCP routed Dr. Barnes' reports, a statement of accepted facts (SOAF), and the case file to Dr. James W. Butler, a Board-certified occupational medicine physician serving as an OWCP district medical adviser (DMA). It requested that the DMA provide an evaluation of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a January 16, 2022 report, Dr. Butler indicated that he had reviewed the SOAF and the medical record, including Dr. Barnes' August 2 and 27, 2022 reports. He noted that he was unable to assign an impairment rating at the time. Dr. Butler indicated that he had no actual cartilage interval measurements from x-rays which were necessary to determine a rating for arthritis and referenced section 16.3c on page 518 of the sixth edition of the A.M.A., *Guides*. He further noted that the findings from the full examination performed by Dr. Barnes would be useful to determine the impairment rating. Dr. Butler requested the additional information prior to completing his report.

OWCP received February 9, 2022 x-ray reports of appellant's knees. The report indicated a film of weightbearing with a sunrise view, that revealed bilateral medial tibiofemoral joint interval narrowing, patellofemoral joint interval narrowing, and lateral joint interval narrowing. The right knee had 1.85 mm of medial joint interval, 3.8 mm of lateral joint interval, and 1 mm of patellofemoral joint interval. The left knee had 2 mm of medial joint interval, 4 mm of lateral joint interval, and 1.15 mm of patellofemoral joint interval. There was evidence of bilateral advanced osteophytes and the impression was aggressive arthritic changes.

On March 16, 2022 OWCP referred appellant and the case file, including a SOAF, to Dr. Kevin L. Scott, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation regarding appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a report dated April 14, 2022, Dr. Scott provided a history of clinical presentation and described the accepted employment conditions, as well as appellant's medical treatment. On examination of the right knee, he noted that appellant wore braces, ambulated with a limp, and had bilateral medial and lateral joint tenderness to palpation. Dr. Scott recorded 90 degrees of flexion for the right knee, 90 degrees of flexion for the left knee, 0 degrees of extension for the right knee, and 0 degrees of extension for the left knee. He diagnosed osteoarthritis of the knees and opined that appellant had reached MMI. Dr. Scott indicated that x-ray findings of the right knee revealed 1.85 mm of medial joint interval, 3.8 mm of lateral joint interval, and 1 mm of patellofemoral joint interval. In the left knee, x-rays revealed 2 mm of medial joint interval, 4 mm of lateral joint interval, and 1.15 mm of patellofemoral joint interval.

Dr. Scott referred to the sixth edition of the A.M.A., *Guides* and utilized the DBI rating method to calculate appellant's right lower extremity impairment, noting that, under Table 16-3, page 511, the CDX for appellant's 1 mm of right patellofemoral joint interval resulted in a Class

3 impairment. He assigned a GMFH of 1 and a GMPE of 1. Dr. Scott found that GMCS was not applicable. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) = (1 - 3) + (1 - 3) = -4, which resulted in grade A or 26 percent permanent impairment of the right lower extremity. For the left lower extremity, Dr. Scott utilized the DBI rating method to find that, under Table 16-3, page 511, the CDX for appellant's 2 mm interval of the left medial joint resulted in a Class 2 impairment with a default value of 20. He assigned a GMFH of 1 and a GMPE of 1. Dr. Scott found that the GMCS was not applicable. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) = (1 - 2) + (1 - 2) = -2, which resulted in grade A or 16 percent permanent impairment of the left lower extremity.

On April 28, 2022 OWCP routed the second opinion report to Dr. Barnes for review and requested that he address whether he agreed with Dr. Scott's impairment rating. In a May 5, 2022 report, Dr. Barnes indicated that he concurred with Dr. Scott's impairment rating.

On May 11, 2022 OWCP routed Dr. Scott's report, a SOAF, and the case file to Dr. Butler, in his role as DMA, for review and a determination of appellant's permanent impairment.

In a May 27, 2022 report, Dr. Butler indicated that he had reviewed the SOAF and medical record. Discussing Dr. Scott's April 14, 2022 findings, he determined that application of the DBI rating method under Table 16-3 on page 511 of the sixth edition of the A.M.A., *Guides* to the right lower extremity meant that appellant's right knee joint arthritis of the patellofemoral cartilage (1 mm cartilage interval) fell under a CDX of Class 2 with a default value of 20 percent. Dr. Butler assigned a GMFH of 1 and a GMPE of 1 (due to decreased range of motion with palpable findings). He noted that the GMCS was not applicable. Dr. Butler noted that, after applying a net adjustment, appellant had 16 percent permanent impairment of the right lower extremity. He indicated that there was a discrepancy between his right lower extremity rating and that of Dr. Scott as Dr. Scott assigned a rating for patellofemoral arthritis in the right knee of Class 3, whereas pursuant to the sixth edition of the A.M.A., *Guides* patellofemoral arthritis of 1 mm cartilage interval was rated in Class 2 with a maximum impairment rating of 17 percent.

With respect to the left lower extremity, Dr. Butler found appellant's left knee joint arthritis of the medial compartment (2 mm cartilage interval) fell under a CDX of Class 2 with a default value of 20 percent. He assigned a GMFH of 1 and a GMPE of 1 (due to decreased range of motion). Dr. Butler found that the GMCS was not applicable. He calculated a net adjustment of -2, for 16 percent permanent impairment of the left lower extremity. Dr. Butler indicated that appellant's date of MMI was April 14, 2022.

On July 5, 2022 OWCP routed the case record, including Dr. Butler's report, to Dr. Scott for review and requested that he address whether he agreed with Dr. Butler's impairment rating. In a July 25, 2022 report, Dr. Scott concurred with Dr. Butler's impairment rating.

By decision dated August 16, 2022, OWCP granted appellant a schedule award for 16 percent permanent impairment of each lower extremity. The award ran for 92.16 weeks from August 27, 2021 through June 3, 2023 and was based on the opinions of Dr. Scott, OWCP's referral physician, and Dr. Butler, the DMA.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing regulations[5] 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 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 adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[6] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[7] 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.[8]

The sixth edition of the A.M.A., *Guides* provides for a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health*.[9] 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.[10] After the 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).[11] 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.[12]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id. See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[7] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id*. at Chapter 2.808.5a (March 2017).

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

[9] A.M.A., *Guides*, page 3, section 1.3.

[10] *See* A.M.A., *Guides* 509, Table 16-3.

[11] *Id*. at 515-22.

[12] *Id*. at 23-28.

accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 16 percent permanent impairment of each lower extremity, for which he previously received a schedule award.

On April 14, 2022 Dr. Scott, OWCP's referral physician, conducted an evaluation of the extent of permanent impairment of appellant's right lower extremity using the DBI rating method described in Table 16-3 of the sixth edition of the A.M.A., *Guides*. He found that, utilizing Table 16-3, the patellofemoral arthritis of appellant's right knee had a CDX of Class 3. Dr. Scott assigned a GMFH of 1 and a GMPE of 1. He found that a GMCS was not applicable. Dr. Scott calculated a net adjustment of -4, yielding an impairment rating of 26 percent permanent impairment for the right lower extremity.

With regard to the left lower extremity, Dr. Scott rated appellant's primary knee using the diagnosis as joint arthritis and found that a 2 mm medial joint interval warranted a CDX of Class 2. He assigned a GMFH of 1 and GMPE of 1. Dr. Scott found that GMCS was not applicable. He concluded that appellant had a net adjustment of -2, for an impairment rating of 16 percent for the left lower extremity.

On May 27, 2022 Dr. Butler, the DMA, evaluated the April 14, 2022 impairment rating of Dr. Scott. With respect to the left lower extremity, he properly applied the DBI rating method under Table 16-3 on page 511 of the sixth edition of the A.M.A., *Guides* to find that appellant's left primary knee joint arthritis in the form of medial compartment arthritis (2 mm cartilage interval) fell under a CDX of Class 2 with a default value of 20 percent.[14] Dr. Butler assigned a GMFH of 1 and a GMPE of 1, and found that GMCS did not apply.[15] He utilized the net adjustment, which resulted in a final calculation of 16 percent permanent impairment of the left lower extremity. The Board finds that Dr. Butler properly applied the A.M.A., *Guides* to find that appellant had 16 percent permanent impairment of the left lower extremity, for which appellant previously received a schedule award, and thus properly found that he was not entitled to additional schedule award compensation for the left lower extremity.

With respect to the right lower extremity, Dr. Butler referred to the sixth edition of the A.M.A., *Guides*, and utilized the DBI rating method to find that, under Table 16-3, page 511, the CDX for appellant's right knee patellofemoral arthritis (1 mm cartilage interval) resulted in a Class 2 impairment with a default value of 20 percent. He disagreed with Dr. Scott who assigned a rating for patellofemoral arthritis in the right knee of Class 3, asserting that this rating was inconsistent

[13] *See supra* note 7 at Chapter 2.808.6f (March 2017). *See also P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

[14] *See* A.M.A., *Guides* 511, Table 16-3.

[15] It is noted that it was proper for Dr. Butler to not find a GMCS applicable for either lower extremity as clinical studies were used to determine the CDX. *See id.* at 515-22.

with the sixth edition of the A.M.A., *Guides* on page 511 as patellofemoral arthritis of 1 mm cartilage interval was rated in Class 2. Dr. Butler assigned a GMFH of 1 and a GMPE of 1, and found that the GMCS was not applicable. He utilized the net adjustment, which resulted in 16 percent permanent impairment of the right lower extremity.

The Board notes that Dr. Butler properly determined that Dr. Scott erred when he rated appellant's right patellofemoral arthritis under a CDX of Class 3. Dr. Butler also properly noted that this patellofemoral arthritis fell under Class 2, assigned grade modifiers, and calculated a net adjustment. He assigned a 20 percent default value for right patellofemoral arthritis, but the Board notes that Table 16-3 actually dictates assignment of 15 percent impairment default value for this condition, which in turn would yield 14 percent permanent impairment of the right lower extremity upon application of the net adjustment of -2. The Board finds that, given appellant has already received a schedule award for 16 percent permanent impairment of the right lower extremity, he would not be entitled to additional schedule award compensation for that extremity.

As appellant has not established greater than 16 percent permanent impairment of each lower extremity, for which he previously received schedule award compensation, 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 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 his burden of proof to establish greater than 16 percent permanent impairment of each lower extremity, for which he previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 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