

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

E.S., Appellant	)	
	)	
and	)	<b>Docket No. 24-0050</b>
	)	<b>Issued: April 1, 2024</b>
U.S. POSTAL SERVICE, SOUTH SUBURNAN	)	
PROCESSING & DISTRIBUTION CENTER,	)	
Bedford Park, IL, 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  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On October 23, 2023 appellant filed a timely appeal from August 30 and October 11, 2023 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 appellant has 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; and (2) whether OWCP properly denied appellant's request for a lump-sum payment of his schedule award.

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

## **FACTUAL HISTORY**

On October 13, 2011 appellant, then a 54-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 12, 2011 he sustained a right knee injury when he struck his right knee and leg on a caster while in the performance of duty. He stopped work on that date. OWCP accepted the claim for right knee medial meniscus tear, right knee medial collateral ligament (MCL) sprain, right knee chondromalacia patellae, and right knee prepatellar bursitis. It paid appellant wage-loss compensation on the supplemental rolls, effective November 25, 2011, and on the periodic rolls, effective March 11, 2012.

On April 16, 2012 appellant underwent OWCP-authorized right knee partial medial meniscectomy arthroscopy surgery.

On November 30, 2022 appellant completed a Form EN-1032 and indicated that he had not worked for any employer during the past 15 months. He also reported that he was not in receipt of Office of Personnel Management (OPM) or Social Security Administration (SSA) retirement benefits. Appellant indicated that he was receiving SSA disability benefits.

On June 27, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a June 27, 2023 development letter, OWCP requested that appellant submit a report from his treating physician, which included an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>2</sup> and provide the date that he reached maximum medical improvement (MMI). It afforded him 30 days to submit additional medical evidence in support of his schedule award claim.

Appellant submitted a July 21, 2023 report from Dr. Samuel Chmell, a Board-certified orthopedic surgeon, who noted that appellant had reached MMI as of May 5, 2023. Dr. Chmell reported examination findings of limp on the right side with effusion, tenderness, crepitus, and bony eburnation of the right knee. He indicated that range of motion (ROM) findings were diminished with 5 to 95 degrees over three tests. Dr. Chmell also reported that x-ray examination of the right knee revealed 0 millimeters (mm) cartilage interval in the medial compartment. He referenced 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, appellant had a Class 4 impairment based on primary knee joint arthritis for no cartilage interval, which resulted in a default value of 50 percent permanent impairment of the right lower extremity.

On July 31, 2023 OWCP forwarded Dr. Chmell's July 21, 2023 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 right lower extremity under the sixth edition of the A.M.A., *Guides*.

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

In an August 3, 2023 report, Dr. Katz indicated that he had reviewed the SOAF and appellant's medical record, including Dr. Chmell's July 21, 2023 report. He agreed with Dr. Chmell's opinion that appellant had 50 percent permanent impairment of the right lower extremity. Dr. Katz determined that, under the DBI-rating method of the sixth edition of the A.M.A., *Guides*, the appropriate class of diagnosis (CDX) was Class 4, with a default value of 50 percent for primary knee arthritis, no cartilage interval. He assigned a grade modifier for functional history (GMFH) of 2 and a grade modifier for physical examination (GMPE) of 3. Dr. Katz indicated that a grade modifier for clinical studies (GMCS) was not applicable. He applied the net adjustment formula,  $(2 - 4) + (3 - 4) = -3$ . Given that -2 was the maximum negative adjustment value allowable, this resulted in a final rating of 50 percent permanent impairment of the right lower extremity. Dr. Katz reported that the A.M.A., *Guides* did not allow for use of the alternate ROM rating method for the diagnosis used.

By decision dated August 30, 2023, OWCP granted appellant a schedule award for 50 percent permanent impairment of his right lower extremity. The schedule award ran for 144.0 weeks from August 13, 2023 through May 16, 2026 and was based on Dr. Chmell's July 21, 2023 report and Dr. Katz' August 3, 2023 report.

In a letter dated September 7, 2023, OWCP informed appellant that it had received his request for a lump-sum payment of his schedule award benefits under FECA. It advised him that a determination of a lump-sum payment was based on whether such a payment would be in his best interest. OWCP indicated that appellant should submit evidence showing that the schedule award was not a substitute for wages.

In an undated statement, appellant requested a lump sum of his schedule award to his bank. Appellant submitted a Form SSA-1099 2022 Social Security benefit statement, which indicated that in 2022 he received net benefits of \$32,155.50.

By decision dated September 20, 2023, OWCP denied appellant's request for a lump-sum payment. It found that the evidence did not establish that a lump sum was in his best interest.

On September 26, 2023 appellant requested reconsideration.

By decision dated October 2, 2023, OWCP denied modification of the September 20, 2023 decision.

On October 4, 2023 appellant requested reconsideration.

Appellant submitted an e-mail regarding a class action. The e-mail advised appellant that the administrative law judge had not yet issued a decision and that it was seeking all pay and benefits lost as a result of the National Reassessment Process (NRP), appropriate reinstatement of employment accommodations, and \$300,000 in compensatory damages.

By decision dated October 11, 2023, OWCP denied modification of the September 20, 2023 decision.

## LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA<sup>3</sup> and its implementing 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 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 adoption.<sup>5</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>6</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>7</sup> 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).<sup>8</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>9</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>10</sup>

## ANALYSIS -- ISSUE 1

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.

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</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>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> *See* A.M.A., *Guides* (6<sup>th</sup> ed. 2009), 509-11.

<sup>8</sup> *Id.* at 515-22.

<sup>9</sup> *Id.* at 23-28.

<sup>10</sup> *Supra* note 6 at Chapter 2.808.6f (March 2017).

In a July 21, 2023 report, Dr. Chmell provided examination findings and noted that appellant had reached MMI as of May 5, 2023. Utilizing the sixth edition of the A.M.A., *Guides* and the DBI rating method, he determined that appellant had a Class 4 impairment under Table 16-3 (Knee Regional Grid), which resulted in a default value of 50 percent permanent impairment, based on the diagnosis of primary knee joint arthritis with no cartilage interval.

On August 3, 2023 Dr. Katz, the DMA, reviewed Dr. Chmell's July 21, 2023 impairment rating report, along with a SOAF, and concurred with Dr. Chmell's finding that appellant had 50 percent permanent impairment of the right lower extremity due to his accepted right knee injury. The Board has reviewed Dr. Katz' rating, and finds that he properly applied the appropriate tables and grading schedules to the findings from Dr. Chmell's impairment report, pursuant to the A.M.A., *Guides*.<sup>11</sup> Dr. Katz properly utilized the DBI rating method to find that, under Table 16-3 (Knee Regional Grid), appellant had a Class 4 impairment for primary knee joint arthritis with no cartilage interval, which resulted in a default value of 50 percent. He assigned a GMFH of 2 and a GMPE of 3 and applied the net adjustment formula, which resulted in a final impairment of 50 percent permanent impairment of the right lower extremity.

Accordingly, the Board finds that, as appellant has not submitted medical evidence establishing greater than 50 percent permanent impairment of the right lower extremity, 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.

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

Section 8135(a) of FECA,<sup>12</sup> which allows for the discharge of the liability of the United States by payment of lump sums, affords the Secretary of Labor discretionary authority to use lump sums as a means of fulfilling the responsibility of OWCP in administering FECA. OWCP's regulations provide that there is no absolute right to a lump-sum payment with respect to a schedule award.<sup>13</sup> A lump-sum payment may be made to an employee entitled to a schedule award where OWCP determines that such a payment is in the employee's best interest.<sup>14</sup> The regulations provide that a lump-sum payment generally will be considered in the employee's best interest only where the employee does not rely upon compensation payments as a substitute for lost wages (that is, the employee is working or receiving annuity payments).<sup>15</sup>

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<sup>11</sup> See *A.F.*, Docket No. 23-0325 (issued July 28, 2023); see also *R.S.*, Docket No. 21-0833 (issued January 25, 2022).

<sup>12</sup> 5 U.S.C. § 8135.

<sup>13</sup> 20 C.F.R. § 10.422(b).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

## ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for a lump-sum payment of his schedule award.

OWCP granted appellant a schedule award for 144.00 weeks of compensation commencing August 13, 2023. He requested a lump-sum payment. As noted, there is no provision for an advance payment of a portion of a schedule award. OWCP does have discretionary authority to grant a single, lump-sum payment for a schedule award if it is determined to be in the employee's best interest.<sup>16</sup>

The record reveals that appellant was not working or receiving annuity payments at the time of OWCP's September 20, 2023 decision denying his request for a lump-sum payment. In an EN-1032 form received on December 6, 2022, he did not report any wages from employment or receipt of retirement annuity payments. Although appellant submitted an SSA 2022 benefit statement, the evidence of record indicates that the benefits were for disability benefits, and not retirement annuity benefits. Appellant has provided no evidence that he was working or receiving a regular income. Accordingly, the Board finds that the evidence of record establishes that he would rely on the schedule award payments as a substitute for lost wages. Based on the standard set forth at 20 C.F.R. § 10.422(b), OWCP found there was no evidence that a lump-sum payment would be in appellant's best interest.<sup>17</sup>

The Board finds that OWCP did not abuse its discretion in denying the request for a lump-sum payment. OWCP explained its finding to appellant and the evidence of record supports the finding that a lump-sum payment was not in his best interest. Pursuant to 20 C.F.R. § 10.422(b), OWCP properly denied the request for a lump-sum payment.

## 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 a schedule award. The Board also finds that OWCP properly denied his request for a lump-sum payment of his schedule award.

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<sup>16</sup> *Supra* notes 13 and 14.

<sup>17</sup> *See D.E.*, Docket No. 12-0158 (issued June 8, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 30 and October 11, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 1, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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