

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

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C.L., Appellant )

and )

U.S. POSTAL SERVICE, NORTH AUGUSTA )  
POST OFFICE, North Augusta, SC, Employer )

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**Docket No. 23-1165  
Issued: February 21, 2024**

*Appearances:*

Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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 September 13, 2023 appellant, through counsel, filed a timely appeal from an August 24, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish greater than 23 percent permanent impairment of the left lower extremity for which she previously received a schedule award.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 7, 2020 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she twisted her knee when ascending steps while in the performance of duty. She stopped work on that date. On February 26, 2020 appellant underwent an OWCP-approved surgical closed reduction percutaneous pinning of the distal end of the left femur. On March 5, 2020 OWCP accepted the claim for nondisplaced fracture of the medial malleolus of the left tibia. It paid wage-loss compensation on the periodic rolls commencing March 25, 2020. On September 15, 2020 appellant underwent OWCP-authorized surgical removal of symptomatic orthopedic hardware. She retired from the employing establishment effective December 31, 2020 and elected to receive Civil Service Retirement System benefits effective January 1, 2021.

On May 27, 2021 OWCP expanded acceptance of appellant's claim to include temporary aggravation of unilateral primary osteoarthritis of the left knee. On August 2, 2021 appellant underwent an OWCP-authorized left knee total arthroplasty. Left knee x-rays on August 2 and 17, 2021 revealed arthroplasty changes and that the arthroplasty components appeared well seated with excellent alignment and no sign of loosening or complications.

In October 27 and December 1, 2021, and January 31, 2022 reports, Dr. Lee Patterson, a Board-certified orthopedic surgeon, found that appellant had reached maximum medical improvement (MMI) on October 27, 2021. He noted good range of motion (ROM) with "very close to full extension" and 115 degrees of flexion. Dr. Patterson diagnosed primary osteoarthritis of the left knee resulting in an arthroplasty with a good result and found that appellant had 37 percent permanent impairment of the left lower extremity.

On February 23, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a March 12, 2022 report, Dr. Herbert White, Jr., a physician Board-certified in preventative medicine, serving as OWCP's district medical adviser (DMA), reviewed the statement of accepted facts (SOAF), the medical record, and Dr. Patterson's October 27 and December 1, 2021, and January 31, 2022 reports. He requested additional physical findings from Dr. Patterson in support of his impairment rating including additional range of motion measurements.

OWCP, in a March 17, 2022 development letter, requested that appellant obtain additional medical evidence from her treating physician including a final rating of the permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> OWCP afforded appellant 30 days to submit this additional evidence.

On March 25, 2022 Dr. Sami E. Moufawad, a Board-certified physiatrist, described appellant's history of injury and medical treatment. He reported that she was limping on the left leg, but did not use a cane, and that she experienced deep, achy, and stabbing pain in the left knee. Dr. Moufawad noted atrophy of the left thigh and calf and diagnosed nondisplaced

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

fracture of the medial malleolus of the left tibia and temporary aggravation of unilateral primary osteoarthritis of the left knee. He determined that appellant had reach MMI on October 27, 2021. Dr. Moufawad utilized the diagnosis-based impairment (DBI) methodology of the A.M.A., *Guides*, Table 16-3 (Knee Regional Grid) page 511, and found that she had a class of diagnosis (CDX) of total knee replacement with a fair result due to mild motion deficit, resulting in a Class 3 impairment with a default value of 37 percent permanent impairment. He determined a grade modifier for functional history (GMFH) of 1, as although appellant was limping, she did not use a cane. Dr. Moufawad provided three ROM measurements including -5, -3, and -3 degrees of extension and 70, 80, and 80 degrees of extension. He further found a grade modifier for physical examination (GMPE) of 2, but did not include this grade modifier in the net adjustment formula as it was used to calculate the CDX, Table 16-8, page 519. Dr. Moufawad determined a grade modifier for clinical studies (GMCS) of 2 as the knee arthroplasty components were in place. He applied the net adjustment (GMFH-CDX) + (GMCS-CDX) or (1-3) + (2-3) = -3 or grade A, 31 percent permanent impairment of the left lower extremity.

On May 10, 2022 OWCP requested further review by Dr. White, acting as the DMA. In a report dated May 11, 2022, Dr. White reviewed the SOAF, the medical record, and Dr. Moufawad's March 25, 2022 report. He found the correct diagnosis on the DBI Regional Grid was total knee replacement, Table 16-3, page 511, Class 2, good result, with a default value of 25 percent. Dr. White determined that the ROM method could not be used to rate the impairment because of the inconsistent findings made by Drs. Patterson and Moufawad. He referenced Table 16-6, Table 16-7, Table 16-8, and Table 16-23, pages 516, 517, 519, and 549, respectively, and listed the grade modifiers as GMFH of 1 due to antalgic gait, GMPE of 2 due to atrophy, and GMCS of 2, due to good implant position. Dr. White utilized all three grade modifiers in the net adjustment formula to reach (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (1-2) + (2-2) + (2-2) or -1. He determined that appellant had 23 percent permanent impairment of the left lower extremity and that the ROM impairment method was not applicable in accordance with section 16.7, page 543 of the A.M.A., *Guides*.

By decision dated August 17, 2022, OWCP granted appellant a schedule award for 23 percent permanent impairment of the left lower extremity. The award ran for 463.68 days from March 25, 2022 through July 1, 2023.

On August 18, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing took place on December 8, 2022.

By decision dated February 21, 2023, OWCP's hearing representative found that appellant had not established greater than 23 percent permanent impairment of her left lower extremity for which she had previously received a schedule award.

On July 24, 2023 appellant, through counsel, requested reconsideration. She provided a March 4, 2023 addendum report from Dr. Moufawad in which he opined that the DMA improperly relied upon Dr. Patterson's ROM figures which were not consistent with the A.M.A. *Guides*. He determined that appellant's total knee replacement had a fair result in accordance with Table 16-3, page 511, supported by her mild motion deficit found on his examination.

OWCP requested further clarification from the DMA on February 7, 2020. In an August 18, 2023 addendum report, Dr. White, the DMA, reviewed Dr. Moufawad's March 4, 2023 report, and repeated his impairment rating of 23 percent permanent impairment of the left lower extremity.

By decision dated August 24, 2023, OWCP denied modification.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>4</sup> and its implementing regulations<sup>5</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>6</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>7</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>8</sup> 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).<sup>9</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>10</sup>

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>11</sup> For a conflict to arise, the opposing physicians' opinions must be

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</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>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> *See A.M.A., Guides* (6<sup>th</sup> ed. 2009), 509-11.

<sup>9</sup> *Id.* at 515-22.

<sup>10</sup> *Id.* at 23-28.

<sup>11</sup> 5 U.S.C. § 8123(a); *see E.L.*, Docket No. 20-0944 (issued August 30, 2021); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

of virtually equal weight and rationale.<sup>12</sup> In situations where the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>13</sup>

### ANALYSIS

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

In a May 11, 2022 report, Dr. White found that appellant had 23 percent permanent impairment of the left lower extremity under the DBI rating method. Under the sixth edition of the A.M.A., *Guides*, he utilized the DBI rating method to find that, under Table 16-3, the CDX for appellant's left knee arthroplasty resulted in a Class 2 impairment with a default value of 25.<sup>14</sup> Dr. White assigned a GMFH of 1 based on antalgic gait, GMPE of 2 due to atrophy, and GMCS of 2, due to good implant position. He utilized the net adjustment formula,  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 2) + (2 - 2) + (2 - 2) = -1$ , which resulted in a grade B or 23 percent permanent impairment of the left lower extremity. Dr. White determined that the ROM rating method could not be used to increase the impairment class to Class 3 because of the inconsistent findings made by Drs. Patterson and Moufawad.

In contrast, Dr. Moufawad, an attending physician, determined in his March 25, 2022, and March 4, 2023 reports that appellant had a total 31 percent permanent impairment of the left lower extremity under the DBI rating method. He referred to the sixth edition of the A.M.A., *Guides* and utilized the DBI rating method to find that under Table 16-3, the CDX for the left knee total replacement resulted in a Class 3 impairment with a default value of 37. Dr. Moufawad determined that appellant's total knee replacement was a fair result based on her mild motion deficit. He found that GMPE was not applicable as it was used to establish the diagnosis and proper placement in the regional grid. Dr. Moufawad utilized the net adjustment formula,  $(GMFH - CDX) + (GMCS - CDX) = (1 - 3) + (2 - 3) = -3$  or grade A, 31 percent permanent impairment of the left lower extremity.

The Board finds that there is a conflict in the medical opinion evidence regarding appellant's left lower extremity permanent impairment, which necessitates further development of the medical evidence.<sup>15</sup>

Because there remains an unresolved conflict in medical opinion regarding the permanent impairment of appellant's left lower extremity, pursuant to 5 U.S.C. § 8123(a), the case will be remanded to OWCP for referral of appellant, together with the case record, and a SOAF, to a specialist in the appropriate field of medicine for an impartial medical examination to resolve the

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<sup>12</sup> A.W., Docket No. 23-0618 (issued September 27, 2023); P.R., Docket No. 18-0022 (issued April 9, 2018); James P. Roberts, 31 ECAB 1010 (1980).

<sup>13</sup> See A.W., *id.*; D.M., Docket No. 18-0746 (issued November 26, 2018); R.H., 59 ECAB 382 (2008); James P. Roberts, *id.*

<sup>14</sup> A.M.A., *Guides* 509-11.

<sup>15</sup> See *supra* notes 11 through 13.

conflict. Following this and other such 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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 24, 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: February 21, 2024  
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