

ISSUE

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

FACTUAL HISTORY

On August 15, 2021 appellant, then a 40-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on that day he sustained right ankle, right foot, and right knee injuries when he tried to climb through a hole in a fence while tracking a group that had scattered in the performance of duty. He explained that when he stood up from a squatting position, his belt and right foot caught on the fence and his right knee and right ankle/foot “popped.” Appellant stopped work on September 3, 2021. OWCP assigned that claim OWCP File No. xxxxxx839.³ It accepted the claim for other tear of right knee medial meniscus, sprain of right knee medial collateral ligament, sprain of right knee posterior cruciate ligament, right knee effusion, and strain of right quadriceps muscle, fascia and tendon. Appellant returned to full-time modified-duty work with restrictions on November 3, 2021. He underwent OWCP-authorized right knee anterior cruciate ligament (ACL) repair and augmentation on November 16, 2021. OWCP paid appellant appropriate compensation benefits. Appellant returned to full-duty work on January 14, 2022.

In a March 17, 2022 report, Dr. Stephen Josh Bell, a Board-certified orthopedic surgeon, noted the history of appellant’s August 2021 employment injury and his prior right knee injury that required surgery in 2019. He also reported appellant’s physical examination findings, including full range of motion (ROM) of the right knee. Dr. Bell determined that appellant had reached maximum medical improvement (MMI) on February 25, 2022, when he was released from clinical treatment. Under the diagnosis-based impairment (DBI) methodology of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*,⁴ he determined that appellant had eight percent permanent impairment of his right lower

³ Appellant has prior claims. In OWCP File No. xxxxxx001, OWCP accepted his September 23, 2011 traumatic injury for effusion of joint, left upper arm. In OWCP File No. xxxxxx729, it accepted appellant’s March 9, 2019 traumatic injury for sprain of other ligaments of left ankle, bucket handle tear of medial meniscus right knee, other tear of medial meniscus right knee, contusion of right knee, strain of muscle, fascia tendon at right thigh, and tibial collateral bursitis of right leg. On June 20, 2019 appellant underwent OWCP-authorized arthroscopy with anterior horn medial meniscus and debridement with medial femoral condyle chondroplasty. By decision dated August 18, 2020, OWCP granted him a schedule award for 3 percent permanent impairment of the right lower extremity and an additional 2 percent permanent impairment of the left lower extremity, noting that he was previously awarded 17 percent left lower extremity permanent impairment, for a total 19 percent left lower extremity permanent impairment. By decision dated March 25, 2021, it modified its August 18, 2020 decision to reflect an additional two percent right lower extremity permanent impairment for a total five percent right lower extremity permanent impairment. The Board, in a May 5, 2022 decision, set aside the August 18, 2020 decision and remanded the case to OWCP for further development as to whether appellant had greater than five percent permanent impairment of the right lower extremity. Docket No. 21-1215 (issued May 5, 2022). In a September 28, 2022 decision, OWCP again found that appellant had an additional two percent permanent impairment of the right lower extremity for a total five percent right lower extremity permanent impairment.

⁴ A.M.A., *Guides* (6th ed. 2009).

extremity. Dr. Bell found that a class of diagnosis (CDX) for the accepted ACL tear under Table 16-3, page 509 was a Class 0 or zero percent impairment status post ACL repair with no laxity and/or instability. He further found that a CDX for primary knee joint arthritis with full-thickness medial femoral condyle articular cartilage defect, status post microfracture drilling under the same table was a Class 1 impairment, grade C or seven percent impairment. Dr. Bell assigned a grade modifier for functional history (GMFH) of 0; a grade modifier for physical examination (GMPE) of 2; and a grade modifier for clinical studies (GMCS) of 2. He applied the net adjustment formula $(GMFH - CDX) (0-1) + (GMPE - CDX) (2-1) + (GMCS - CDX) (2-1) = +1$ net adjustment, which resulted in a Class 1 impairment, grade C or seven percent permanent impairment of the right lower extremity. Dr. Bell moved the Class 1 impairment, grade C, seven percent impairment, to a grade D or eight percent permanent impairment of the right lower extremity. Under the ROM impairment methodology, Dr. Bell determined that appellant had zero percent impairment of the right lower extremity due to full ROM of the right knee.

On April 10, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On July 26, 2022 OWCP referred the case record and a statement of accepted facts (SOAF) to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA).

In an August 5, 2022 report, Dr. Hammel noted his review of the SOAF and medical record, including Dr. Bell's March 17, 2022 report. He concurred with Dr. Bell's finding that appellant had eight percent permanent impairment of the right lower extremity based on the DBI rating method. Dr. Hammel also concurred with his zero percent right lower extremity permanent impairment finding based on the ROM methodology. He determined that appellant had attained MMI on March 17, 2022. Dr. Hammel noted that he was not aware of any prior impairment awards for the right lower extremity.

On September 13, 2022 OWCP advised Dr. Hammel that it had failed to inform him that appellant previously received a schedule award for five percent permanent impairment of the right lower extremity. It requested that he provide a supplemental report addressing whether the percentage of impairment provided included the prior percentage awarded or if it should be considered an addition to the prior award.

In a September 27, 2022 report, Dr. Hammel reiterated his prior opinion that appellant had eight percent permanent impairment of the right lower extremity in accordance with the DBI rating method and that appellant had zero percent right lower extremity permanent impairment based on the ROM rating method. He noted that appellant was previously awarded five percent permanent impairment of the right lower extremity. Dr. Hammel, thus opined that he was entitled to an additional three percent permanent impairment of the right lower extremity for a total eight percent right lower extremity permanent impairment.

By decision dated December 14, 2022, OWCP granted appellant schedule award compensation for an additional three percent permanent impairment of the right lower extremity (right leg), for a total eight percent permanent impairment of the right lower extremity based on

the opinions of Dr. Bell and Dr. Hammel. The period of the award ran for eight weeks and a fraction of a week for the period March 17 to May 16, 2022.

On December 16, 2022 and February 9, 2023 appellant requested reconsideration. In the December 16, 2022 request for reconsideration, he alleged that his premium pay under the Border Patrol Agent Reform Act was not included in the schedule award. In support of the February 9, 2023 request, appellant submitted an undated letter in which he contended that he had eight percent permanent impairment of the right lower extremity rather than three percent permanent impairment as found by Dr. Hammel without explanation. He asserted that his prior right knee injuries in OWCP File Nos. xxxxxx729 and xxxxxx001 were separate and unrelated to his current right knee injury in OWCP File No. xxxxxx839.

On February 21, 2023 OWCP requested Dr. Hammel review the letter accompanying appellant's February 9, 2023 request for reconsideration and provide an addendum report justifying his additional three percent right lower extremity permanent impairment rating set forth in his September 27, 2022 report.

In a March 3, 2023 report, Dr. Hammel continued to opine that appellant had an additional three percent permanent impairment of the right lower extremity for a total of eight percent right lower extremity permanent impairment. He also reiterated that appellant had reached MMI on March 17, 2022. In response to appellant's contention that he had multiple separate right knee injuries, Dr. Hammel explained that based on the sixth edition of the A.M.A., *Guides* if there are multiple diagnoses for the same body part, then the most impairing diagnosis was rated and if that impairment rating was higher than a previous schedule award, then the previous award must be discarded.

By decision dated March 6, 2023, OWCP denied modification of its December 14, 2022 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA⁵ and its implementing regulations⁶ 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.⁷ As of May 1, 2009, schedule awards are determined in

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*; see *S.C.*, Docket No. 22-0922 (issued January 12, 2021); see also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

accordance with the sixth edition of the A.M.A., *Guides* (2009).⁸ 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.⁹

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the *World Health Organization's International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.¹⁰ 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 foot/ankle and knee, reference is made to Table 16-2 through Table 16-4 beginning on page 501.¹¹ After the CDX is determined from each of these tables (including identification of a default grade value), the net adjustment formula is applied using GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹² 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.¹³

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹⁴

ANALYSIS

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

On April 10, 2022 appellant filed a claim for a schedule award under the present claim. He submitted a March 17, 2022 report by Dr. Bell. Dr. Bell reported his physical examination findings, including full ROM of the right knee. Utilizing the DBI rating method of the sixth edition of the A.M.A., *Guides*, Table 16-3, page 510 of the A.M.A., *Guides*, for cruciate or collateral ligament injury, he identified a CDX for the accepted ACL tear as Class 0 or zero percent impairment status post ACL repair with no laxity and/or instability. He also identified a CDX for

⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

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

¹⁰ A.M.A., *Guides*, page 3, section 1.3.

¹¹ See A.M.A., *Guides* 501-11 (6th ed. 2009).

¹² *Id.* at 515-22.

¹³ *Id.* at 23-8.

¹⁴ See Federal (FECA) Procedure Manual, *supra* note 8; see *K.R.*, Docket No. 21-0247 (issued February 25, 2022); *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

primary knee joint arthritis with full-thickness medial femoral condyle articular cartilage defect, status post microfracture drilling as a Class 1 impairment, grade C or seven percent default value. Dr. Bell assigned a GMFH of 0; a GMPE of 2; and a GMCS of 2. Utilizing the net adjustment formula, he found a net adjustment of 1 and eight percent permanent impairment of the right lower extremity. Dr. Bell also applied the ROM rating method and determined that appellant had zero percent impairment of the right lower extremity due to full ROM of the right knee.

In reports dated August 5 and September 27, 2022, and March 23, 2023, Dr. Hammel, the DMA, reviewed and concurred with Dr. Bell's DBI and ROM ratings. He also properly explained that based on the sixth edition of the A.M.A., *Guides* if there are multiple diagnoses for the same body part, then the most impairing diagnosis should be rated, because it is probable this will incorporate the functional losses of the less impairing diagnoses.¹⁵

The Board finds that the well-rationalized reports of Dr. Bell and Dr. Hammel provide an opinion on appellant's right lower extremity permanent impairment which were derived in accordance with the standards of the sixth edition of the A.M.A., *Guides* and therefore are entitled to the weight of the evidence.¹⁶ Their calculations, including the derivation of grade modifiers and the application of the net adjustment formula, properly applied the relevant standards to the physical examination and diagnostic testing results.

As there is no rationalized medical report providing a rating of permanent impairment greater than that provided by Dr. Bell and Dr. Hammel, the Board finds that appellant had not met his burden of proof to establish greater than eight percent permanent impairment of his right lower extremity, for which he received a schedule award.¹⁷

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 eight percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation.¹⁸

¹⁵ *I.S.*, Docket No. 22-0922 (issued November 21, 2022); *see* A.M.A., *Guides* 529 (6th ed. 2009).

¹⁶ *See N.B.*, Docket No. 22-1295 (issued May 25, 2023); *Y.S.*, Docket No. 19-0218 (issued May 15, 2020); *R.D.*, Docket No. 17-0334 (issued June 19, 2018).

¹⁷ *N.B.*, *id.*; *M.G.*, Docket No. 19-0823 (issued September 17, 2019); *I.T.*, Docket No. 18-1049 (issued December 31, 2018).

¹⁸ The Board notes that OWCP has not issued a final decision regarding appellant's December 16, 2022 reconsideration request regarding his pay rate. *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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