

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

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| <b>J.B., Appellant</b>                  | ) |                                 |
|   | ) |                                 |
| <b>and</b>                              | ) | <b>Docket No. 23-0926</b>       |
|   | ) | <b>Issued: January 23, 2024</b> |
| <b>DEPARTMENT OF THE ARMY, MILITARY</b> | ) |                                 |
| <b>ENTRANCE PROCESSING STATION,</b>     | ) |                                 |
| <b>Memphis, TN, Employer</b>            | ) |                                 |

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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On June 21, 2023 appellant filed a timely appeal from a May 22, 2023 merit decision 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish greater than two percent permanent impairment of her right lower extremity and zero percent permanent

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

<sup>2</sup> The Board notes that, following the May 22, 2023 decision, OWCP received additional evidence. 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 additional evidence for the first time on appeal. *Id.*

impairment of her left lower extremity, for which she previously received schedule award compensation.

### **FACTUAL HISTORY**

On April 22, 2019 appellant, then a 58-year-old human resources assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 19, 2019 she injured the right side of her body when she tripped and fell on uneven pavement and while in the performance of duty. She did not stop work. OWCP accepted the claim for contusion of the right knee, abrasion of the right knee.<sup>3</sup> On November 22, 2023 it expanded the acceptance of appellant's claim to include: lumbar spondylosis without myelopathy or radiculopathy; cervicalgia; strain of muscle, fascia, and tendon of the lower back; tear of the medial meniscus of the right knee; and chondromalacia of the right knee.

On March 16, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated March 22, 2023, OWCP requested that appellant provide an impairment evaluation from her treating physician utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>4</sup> It afforded her 30 days to submit the requested information.

Appellant subsequently submitted a March 25, 2021 lumbar spine magnetic resonance imaging (MRI) scan, which demonstrated transitional lumbosacral junction anatomy.

In an April 20, 2023 impairment rating, Dr. James Brien, a Board-certified anesthesiologist, related appellant's history of injury and medical treatment. He diagnosed contusion of the right knee, abrasion of the right knee, lumbar spondylosis without myelopathy or radiculopathy, cervicalgia, strain of muscle, tendon, fascia of the lower back, tear of medial meniscus of the right knee, and chondromalacia of the right knee. On examination of the right lower extremity, Dr. Brien measured range of motion (ROM) and found tenderness to palpation in the knee, positive Apley's grind test, positive McMurray's test, and antalgic gait with orthotics. He found normal sensation to light touch, pinprick, and two-point discrimination of the bilateral lower extremities. On examination of the lumbar spine, Dr. Brien found tenderness to palpation, mildly limited flexion, and positive Yeoman's test on the right. Referencing the sixth edition of the A.M.A., *Guides*, he applied the diagnosis-based impairment (DBI) rating method and identified the class of diagnosis (CDX) as a meniscal injury with partial medial or lateral tear using Table 16-3 on page 509, which resulted in a Class 1, grade C impairment with a default value of two. Dr. Brien applied a grade modifier for functional history (GMFH) of four based on appellant's antalgic gait with routine use of orthotics, which he excluded as it differed by two or more grades from the other grade modifiers, and a grade modifier for physical examination (GMPE) of one based on minimal palpatory findings. He found that a grade modifier for clinical studies (GMCS) was not applicable as the diagnostic studies were used to identify the impairment value. Dr. Brien applied the net

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<sup>3</sup> Appellant retired from federal employment on December 31, 2021.

<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

adjustment formula,  $(GMPE - CDX) = (1 - 1) = 0$ , which resulted in two percent permanent impairment of the right lower extremity. He advised that appellant's lower extremity condition did not warrant use of the ROM rating method. Dr. Brien also noted that, though appellant's accepted conditions included lumbar and cervical spine diagnoses, her sensory and motor examinations were normal, and there was no radiographic evidence of significant disease in the cervical or lumbar spine. Thus, Dr. Brien concluded that no award of permanent impairment could be made for her spinal conditions. He determined that appellant had reached maximum medical improvement (MMI) on April 20, 2023.

On May 8, 2023 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, serving as an OWCP district medical adviser (DMA), concurred with Dr. Brien's finding that appellant had two percent permanent impairment of the right lower extremity due to a medial meniscal tear as calculated under the DBI rating method. He noted that appellant's right medial meniscus condition did not warrant use of the ROM rating method because Table 16-3 on page 509 of the sixth edition of the A.M.A., *Guides* did not contain an asterisk for that condition, which allowed use of the ROM rating method. However, Dr. Harris noted that Dr. Brien erred in finding two percent permanent impairment of the right lower extremity for lumbar radiculopathy. With regard to the lumbar spine, he noted that appellant had no neurological deficit in either lower extremity consistent with lumbar radiculopathy. Referencing Proposed Table 2 of *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), Dr. Harris found zero percent permanent lower extremity impairment for lumbar radiculopathy due to a Class 0 impairment. He concluded that appellant had two percent permanent impairment of the right lower extremity and zero percent permanent impairment of the left lower extremity. Dr. Harris determined that appellant had reached MMI on April 20, 2023.

By decision dated May 22, 2023, OWCP granted appellant a schedule award for two percent permanent impairment of the right lower extremity. It found that appellant had zero percent permanent impairment of the left lower extremity. The period of the award ran for 5.76 weeks from April 20 through May 30, 2023.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>5</sup> and its implementing regulations<sup>6</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

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

adoption.<sup>7</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>8</sup>

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*.<sup>9</sup> Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by a GMFH, GMPE, and GMCS.<sup>10</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>11</sup> The standards for evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on all factors that prevent a limb from functioning normally, such as pain, sensory deficit, and loss of strength.<sup>12</sup>

Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.<sup>13</sup> Furthermore, the back is specifically excluded from the definition of an organ under FECA.<sup>14</sup> The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that the July/August 2009 edition of *The Guides Newsletter* is to be applied.<sup>15</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than two percent permanent impairment of her right lower extremity and zero percent permanent impairment of her left lower extremity, for which she previously received schedule award compensation.

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<sup>7</sup> *Id.* at § 10.404 (a); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>9</sup> A.M.A., *Guides*, page 3, section 1.3.

<sup>10</sup> *Id.* at 493-556.

<sup>11</sup> *Id.* at 521.

<sup>12</sup> *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *E.B.*, Docket No. 10-0670 (issued October 5, 2010); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>13</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>14</sup> *See id.* at § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

<sup>15</sup> *Supra* note 8 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

In a report dated April 20, 2023, Dr. Brien found tenderness to palpation in the knee, positive Apley's grind test in the right knee, positive McMurray's test in the right knee, antalgic gait with orthotics, and normal sensation to light touch, pinprick, and two-point discrimination of the bilateral lower extremities. On examination of the lumbar spine, he found tenderness to palpation, mildly limited flexion, and positive Yeoman's test on the right. Referencing the sixth edition of the A.M.A., *Guides*,<sup>16</sup> Dr. Brien used the DBI-rating method and identified the CDX as a meniscal injury with partial medial or lateral tear using Table 16-3 on page 509, which resulted in a Class 1, grade C impairment with a default value of two. He applied a GMFH of four based on appellant's antalgic gait with routine use of orthotics, which he excluded as it differed by two or more grades from the other grade modifiers, and a GMPE of one based on minimal palpatory findings. Dr. Brien found that a GMCS was not applicable as the diagnostic studies were used to identify the impairment value. He applied the net adjustment formula, and determined that the net adjustment was zero, resulting in two percent permanent impairment of the right lower extremity. Dr. Brien advised that appellant's lower extremity condition did not warrant use of the ROM rating method. He also noted that, because appellant's sensory and motor examinations were normal and there was no radiographic evidence of significant disease in the cervical or lumbar spine, no award of permanent impairment could be made for her spinal conditions.

On May 8, 2023 Dr. Harris, the DMA, concurred with Dr. Brien's right lower extremity impairment rating due to a medial meniscus tear as calculated under the DBI rating method. He advised that appellant's lower extremity condition did not warrant use of the ROM rating method.

Both Dr. Harris and Dr. Brien properly applied the DBI rating method under the standards of the sixth edition of the A.M.A., *Guides* to find that appellant had two percent permanent impairment of the right lower extremity due to a medial meniscus tear.<sup>17</sup> There is no medical evidence of record establishing that appellant has more than two percent permanent impairment of the right lower extremity. Neither Dr. Brien nor Dr. Harris found any impairment of the left lower extremity and appellant has no accepted conditions within or extending from the back into the left lower extremity. There is no medical evidence of record establishing that appellant has any permanent impairment of the left lower extremity.

Accordingly, the Board finds that the medical evidence of record is insufficient to establish greater than two percent permanent impairment of her right lower extremity and zero percent permanent impairment of her left lower extremity.<sup>18</sup>

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<sup>16</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>17</sup> Both physicians properly noted that appellant's lower extremity condition did not warrant use of the ROM rating method. See A.M.A., *Guides* 497; *E.M.*, Docket No. 14-0311 (issued July 8, 2014) (finding that the ROM rating method is used to determine actual impairment values of the lower extremity, only when it is not possible to otherwise define impairment).

<sup>18</sup> See *G.H.*, Docket No. 20-1214 (issued December 16, 2022); *D.S.*, Docket No. 20-0670 (issued November 2, 2021).

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 her burden of proof to establish greater than two percent permanent impairment of her right lower extremity and zero percent permanent impairment of her left lower extremity, for which she previously received schedule award compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2024  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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