

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

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C.S., Appellant)	
)	
and)	Docket No. 23-1091
)	Issued: January 8, 2024
U.S. POSTAL SERVICE, LARCHMONT POST)	
OFFICE, Larchmont, NY, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 15, 2023 appellant filed a timely appeal from a July 11, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

FACTUAL HISTORY

On January 28, 2021 appellant then a 35-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on that date she sprained her left knee in the performance of duty. She stopped work on January 28, 2021. OWCP accepted the claim for left patella dislocation. It

¹ 5 U.S.C. § 8101 *et seq.*

authorized left medial patellofemoral ligament reconstruction, which appellant underwent on August 12, 2021. OWCP paid appellant wage-loss compensation on the supplemental rolls effective March 15, 2021 and on the periodic rolls effective February 27 to May 21, 2022.

On November 22, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

Appellant submitted a January 10, 2023 progress report from Dr. Yasmin Dhar, a Board-certified orthopedic surgeon. Dr. Dhar provided appellant's physical examination findings and diagnosed left patella dislocation. She related that appellant had 22.5 percent loss of use of her left knee due to chondromalacia at the patellofemoral joint, restriction of deeper knee flexion, and narrowing of the patellofemoral joint.

On May 25, 2023 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion regarding appellant's employment-related conditions and any resulting permanent impairment.

In a June 20, 2023 report, Dr. Sultan recounted appellant's history of injury, and reviewed her medical history. He related that appellant's left knee physical examination findings included two well-healed arthroscopic puncture scars; no knee joint effusion; mobile left knee patella; no clinical signs of deformity, discoloration, or swelling; intact cruciate and collateral ligaments; negative compression, Spring, and McMurray tests; and no abnormal patellofemoral crepitus during active testing. Range of motion findings were 0 degrees extension and 135 degrees flexion with limitation due to her size. Dr. Sultan referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid), page 510, the class of diagnosis (CDX) for left knee patella subluxation resulted in Class 0, which yielded no impairment of the left lower extremity.

By decision dated July 11, 2023, OWCP denied appellant's claim for a schedule award.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing regulations⁴ 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 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

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

adoption.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

The sixth edition of the A.M.A., *Guides* provides the DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health: A Contemporary Model of Disablement*.⁷ Under the sixth edition, the evaluator identifies the impairment for the diagnosed condition CDX, which is then adjusted by a grade modifier for functional history (GMFH), a grade modifier for physical examination (GMPE), and/or a grade modifier for clinical studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁸ Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnosis from regional grids and calculations of modifier scores.⁹

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a district medical adviser (DMA) for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.¹⁰

ANALYSIS

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

On May 25, 2023 OWCP referred appellant's case to Dr. Sultan for an evaluation of appellant's left lower extremity permanent impairment for schedule award purposes. In a June 20, 2023 report, Dr. Sultan utilized Table 16-3, page 510 of the A.M.A., *Guides* and determined that appellant had zero percent permanent impairment of the left lower extremity.

As noted above, after obtaining all necessary medical evidence, the file should be routed to OWCP's 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.¹¹ OWCP's procedures further provide that, after a second opinion is

⁵ *Id.* at § 10.404(a); *see also M.B.*, Docket No. 20-0552 (issued May 14, 2021); *T.T.*, Docket No. 18-1622 (issued May 14, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

⁷ A.M.A., *Guides* 3, section 1.3.

⁸ *Id.* at 494-531.

⁹ *See M.B.*, *supra* note 5; *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁰ *See supra* note 6 at Chapter 2.808.6(f) (March 2017). *W.M.*, Docket No. 21-0728 (issued December 2, 2022); *R.M.*, Docket No. 18-1313 (issued April 11, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010).

¹¹ FECA Bulletin No. 17-06 (issued May 8, 2017).

received, the case should be referred to the DMA for review.¹² In the instant case, however, OWCP failed to route the case record, including Dr. Sultan's June 20, 2023 second opinion report, to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*.¹³

The case must therefore be remanded for referral to a DMA. On remand OWCP shall refer a SOAF and the medical record, including Dr. Sutan's June 20, 2023 report, to a DMA for an opinion regarding the extent of appellant's permanent impairment. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's schedule award claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 11, 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: January 8, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹² *Supra* note 6 at Chapter 2.808.6(e) (March 2017). *See also W.M.*, *supra* note 10; *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹³ *See W.M.*, *id.*; *L.S.*, Docket No. 19-0092 (issued June 12, 2019).