

leg due to factors of her federal employment. She explained that she had performed repetitive duties including lifting and carrying heavy packages, and casing and delivering mail for 10 years. Appellant noted that she first realized that her condition was caused or aggravated by her federal employment on March 17, 2006.

By decision dated August 14, 2007, OWCP accepted appellant's claim for bucket handle tear of lateral meniscus, right. On November 1, 2007 appellant underwent OWCP-authorized right knee arthroscopy with arthroscopic partial lateral meniscectomy and arthroscopic chondroplasty of the lateral femoral condyle and articular surface of the patella.

On May 21, 2008 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated February 23, 2009, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right lower extremity. The award ran for 34.56 weeks from July 30, 2008 through March 28, 2009 (fraction of a day) and was based on the opinions of Dr. Aubrey A. Swartz, OWCP's second opinion Board-certified orthopedic surgeon, and Dr. Leonard A. Simpson, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA).

On January 31, 2022 OWCP expanded the acceptance of appellant's claim to include unilateral primary osteoarthritis, right knee.

OWCP subsequently received reports dated November 30, 2021 and January 4, 2022 by Dr. Gary D. Morris, an orthopedic surgeon. Dr. Morris diagnosed right knee pain and the accepted condition of right knee unilateral primary osteoarthritis. He requested authorization to perform total right knee replacement. Dr. Morris opined that the proposed surgery was due to appellant's previous work injury.

On May 9, 2022 appellant underwent OWCP-authorized right total knee arthroplasty/replacement surgery performed by Dr. Morris.

On May 5, 2023 appellant filed a Form CA-7 claim for an increased schedule award.

In a development letter dated May 8, 2023, OWCP requested that appellant submit a permanent impairment evaluation from her attending physician addressing whether she had reached maximum medical improvement (MMI) and, if so, the extent of any permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² It afforded her 30 days to submit the necessary evidence.

On May 18, 2023 appellant informed OWCP that her treating physician was unable to perform a permanent impairment evaluation.

² A.M.A., *Guides* (6th ed. 2009).

On July 11, 2023 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions to Dr. Gregory Hicken, a Board-certified orthopedic surgeon, to determine the extent of appellant's permanent impairment for schedule award purposes.

In a July 28, 2023 report, Dr. Hicken noted his examination on July 12, 2023. He recounted the history of injury, reviewed the medical record, and set forth his examination findings. Dr. Hicken related that appellant continued to have pain, discomfort, and weakness with walking extended periods of time and going up and down stairs. Regarding the right knee, he reported 120 degrees of flexion and -2 degrees of extension with mild swelling and a notable vertical scar from the accepted right knee total knee arthroplasty. Alignment was normal without deformity. There was moderate tenderness without warmth, masses, or crepitus. Quadriceps strength was 5/5 and hamstring strength was 5/5. There were negative Lachman's, McMurray's, and anterior drawer tests. Dr. Hicken noted that appellant's subjective complaints were consistent with the objective findings since her accepted total knee arthroplasty was only 14 months ago. He opined that she reached MMI on the date of his impairment evaluation. Dr. Hicken related that appellant's accepted diagnoses and 2007 lateral meniscectomy, and 2022 total knee arthroplasty were contained in the SOAF, and she had no additional diagnoses. Appellant had no preexisting permanent impairment. Dr. Hicken utilized the diagnosis-based impairment (DBI) rating method of the sixth edition of the A.M.A., *Guides* and found that the class of diagnosis (CDX) for the accepted lateral meniscus bucket handle tear was a Class 1 impairment with a grade C or default value of two percent. He assigned a grade modifier for functional history (GMFH) of 1, a grade modifier for physical examination (GMPE) of 1, and a grade modifier for clinical studies (GMCS) of 1. Dr. Hicken determined that appellant had a grade C or two percent permanent impairment of the right lower extremity due to ongoing pain and difficulty with her right knee under this diagnosis. He also used the DBI rating method for the accepted CDX of total right knee replacement and found a Class 2 impairment with a default value of 25 percent. Dr. Hicken assigned a GMFH of 1, GMPE of 1, and GMCS of 1. He determined that appellant had a 25 percent permanent impairment with a -3 modifier, resulting in a total of 22 percent right lower extremity permanent impairment due to the accepted total right knee replacement. Dr. Hicken advised that appellant only had mild difficulty and some residual tenderness and pain only with extended walking and ascending and descending stairs. He also determined that appellant had nine percent whole person impairment.

On August 2, 2023 OWCP routed Dr. Hicken's July 28, 2023 report, a SOAF, and the case record to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP DMA, for review and determination regarding the extent of appellant's right lower extremity permanent impairment in accordance with the sixth edition of the A.M.A., *Guides* and the date of MMI.

In his August 11, 2023 report, Dr. Hammel reviewed the SOAF and the medical evidence of record, including Dr. Hicken's July 28, 2023 report. He found that MMI occurred on July 12, 2023, the date of Dr. Hicken's impairment evaluation. The DMA noted a prior schedule award of 12 percent for the right lower extremity. He utilized the DBI rating method of the sixth edition of the A.M.A., *Guides*, and referred to Table 16-3. The DMA identified CDX as a Class 2, grade C impairment with a default value of 25 percent for the accepted right total knee replacement. He assigned a GMFH of 1 for continued pain and a GMPE of 1 for mild motion and loss of tenderness. The DMA advised that a GMCS was not applicable as it was used to determine the diagnosis class.

He applied the net adjustment formula and found a net adjustment of -2, resulting in movement from grade C to A and corresponding to 21 percent right lower extremity permanent impairment due to right total knee replacement. The DMA noted that Dr. Hicken mistakenly used down modification as simple subtraction instead of moving to the left in the impairment class. This error resulted in his finding of 22 percent right lower extremity permanent impairment due to the right knee replacement, which was not an option in the DBI grid.

By decision dated August 16, 2023, OWCP granted appellant a schedule award for an additional 9 percent permanent impairment of the right lower extremity, for a total of 21 percent permanent impairment of the right lower extremity. The award covered a period of 25.92 weeks from July 12, 2023 through January 9, 2024 and was based on the opinion of Dr. Hammel, the DMA.

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 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.⁵ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁶ 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.⁷

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)*.⁸ 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 509.⁹ After the CDX is determined

³ *Supra* note 1 at § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* See also Ronald R. Kraynak, 53 ECAB 130 (2001).

⁶ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

⁷ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁸ A.M.A., *Guides*, page 3, section 1.3.

⁹ See *id.* at 509-11.

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).¹⁰ 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.¹¹

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a 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.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 21 percent permanent impairment of her right lower extremity, for which she previously received schedule award compensation.

In a July 28, 2023 report, Dr. Hicken, OWCP's second opinion physician, reviewed the SOAF and appellant's history of medical treatment. He found that appellant had reached MMI on July 12, 2023, the date of his impairment evaluation. Dr. Hicken applied the A.M.A., *Guides*, Table 16-3 to the accepted lateral meniscus bucket handle tear and found that appellant had two percent permanent impairment of the right lower extremity for this diagnosis. He also applied the DBI rating method to the CDX of total right knee replacement and found a Class 2 impairment with a default value of 25 percent. Dr. Hicken assigned a GMFH of 1, a GMPE of 1, and a GMCS of 1. He determined that appellant had 25 percent permanent impairment with a -3 modifier, resulting in a total of 22 percent right lower extremity permanent impairment. Dr. Hicken advised that she had a fair result with only mild difficulty and some residual tenderness and pain only with extended walking and going up and down stairs. He also determined that appellant had nine percent whole person impairment.¹³

In his August 11, 2023 report, Dr. Hammel, the DMA, discussed appellant's factual and medical history with respect to her accepted right lower extremity conditions. He reviewed Dr. Hicken's July 28, 2023 report and disagreed with his 22 percent right lower extremity impairment rating, properly noting that Dr. Hicken erred in his utilization of the A.M.A., *Guides*. The DMA explained that Dr. Hicken incorrectly subtracted the net adjustment value of -3 from the default value of 25 percent impairment, resulting in 22 percent impairment, which was not an option in the DBI grid. For his rating, the DMA referred to Table 16-3 for the CDX of right total

¹⁰ *Id.* at 494-531.

¹¹ *Id.* at 23-28.

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

¹³ The Board also notes that while Dr. Hicken evaluated appellant's whole body permanent impairment, neither FECA nor its regulations provide for the payment of a schedule award for the body as a whole. *Supra* note 3 at § 8107(c); *see J.P.*, Docket No. 23-0442 (issued August 29, 2023).

knee replacement to determine a Class 2, grade C impairment with a default value of 25 percent. He assigned a GMFH of 1 and a GMPE of 1. The DMA advised that a GMCS was not applicable as it was used to determine the diagnosis class. He applied the net adjustment formula, which resulted in a net adjustment of -2 and found that appellant had 21 percent right lower extremity permanent impairment due to the accepted right total knee replacement.

The Board finds that Dr. Hammel properly explained how he arrived at appellant's rating of permanent impairment by listing the specific table in the A.M.A., *Guides*. The Board also finds that he properly interpreted and applied the standards of the sixth edition of the A.M.A., *Guides* to conclude that appellant had 21 percent permanent impairment of the right lower extremity. The opinion of the DMA therefore represents the weight of the medical evidence and supports that she has no greater than 21 percent permanent impairment of the right lower extremity.

As appellant has not established greater than 21 percent permanent impairment of the right lower extremity, for which she previously received schedule award compensation, the Board finds that she has not met her burden of proof.

Appellant may request a schedule award or increased schedule award at any time based on evidence of 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 21 percent permanent impairment of her right lower extremity, for which she previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2024
Washington, DC

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

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

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