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H.P., Appellant)	
)	
and)	Docket No. 24-0037
)	Issued: March 25, 2024
U.S. POSTAL SERVICE, WASHINGTON POST)	
OFFICE, Washington, MO, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On October 23, 2023 appellant filed a timely appeal from a May 2, 2023 merit decision and an October 18, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

The issues are: (1) whether appellant has met his burden of proof to establish greater than two percent permanent impairment of his right lower extremity for which he previously received a schedule award; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 8, 2022 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 18, 2022 he injured his right knee when he slipped and fell on a small patch of snow and landed hard on his right knee while in the performance of duty. He did not stop work. OWCP accepted the claim for contusion of the right knee and right knee medial meniscal tear.

On October 12, 2022 appellant underwent OWCP-approved right knee arthroscopy with partial medial meniscectomy, synovectomy, debridement, and chondroplasty. He stopped work on that date.

Dr. Michael F. Burns, a Board-certified orthopedic surgeon, released appellant to return to full-duty work on December 20, 2022.

On December 21, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a January 4, 2023 development letter, OWCP requested that appellant submit a report from his treating physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)³ and provide the date that he reached maximum medical improvement (MMI). It afforded him 30 days to submit additional medical evidence in support of his schedule award claim.

In a report dated January 30, 2023, Dr. Burns described appellant's history of injury and medical treatment. He determined that appellant had reached MMI on December 20, 2022. On physical examination, Dr. Burns found "essentially" full range of motion (ROM) of the right knee with mild crepitus. He recounted that appellant had an occasional mild ache in the right knee related to changes in the weather, and attributed this to preexisting arthritis. Dr. Burns opined that appellant had five percent physical impairment of the right knee.

On February 1, 2023 appellant requested referral to a qualified physician to determine permanent impairment due to his accepted January 18, 2022 employment injury and October 2022 surgery.

On February 17, 2023 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Michael H. Ralph, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of any permanent impairment for schedule award purposes in accordance with the sixth edition of the A.M.A., *Guides*.

In a February 28, 2023 report, Dr. Ralph reviewed the SOAF and medical record. On physical examination he found that appellant had very few complaints with regard to his right knee, walked without a limp, and had no right knee swelling. Dr. Ralph determined that appellant's examination was normal, and that he had reached MMI. He identified the diagnoses as partial medial meniscectomy and contusion of the right knee. Dr. Ralph rated appellant's permanent impairment under the diagnosis-based impairment (DBI) rating method. Referencing Table 16-3 (Knee Regional Grid), page 509, he identified the class of diagnosis (CDX) of partial medial

³ A.M.A. *Guides* (6th ed. 2009).

meniscectomy of the right knee with a Class 1 impairment, resulting in a default value of grade C or two percent permanent impairment. He further stated that the rating of two percent permanent impairment was not fair, and that Dr. Burn's rating of five percent permanent impairment was "what I would give if I had the latitude to do so."

On March 8, 2023 OWCP referred the record to Dr. Herbert White, Jr., a Board-certified occupational medicine specialist serving as a district medical adviser (DMA), and requested that he evaluate appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a March 31, 2023 report, the DMA noted that appellant's right lower extremity impairment rating was calculated utilizing the DBI method only, and that the ROM method was not applicable as there was a DBI rating method available. The DMA referred to the sixth edition of the A.M.A., *Guides* at Table 16-3 (Knee Regional Grid), page 509, and found that appellant's right knee findings were consistent with a CDX for meniscal injury with partial medial meniscectomy, which resulted in a Class 1 impairment with a default impairment rating of two percent. Dr. White explained that the default impairment rating must be adjusted based on the grade modifiers, which Dr. Ralph had failed to do. The DMA assigned a grade modifier for functional history (GMFH) of 0, based on absence of a gait abnormality or need for assistive devices; a grade modifier for physical examination (GMPE) of 0, based on normal examination findings; and a grade modifier for clinical studies (GMCS) of 2, based on moderate pathology for patellofemoral chondromalacia. He applied the net adjustment formula $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (0 - 1) + (0 - 1) + (2 - 1) = -1$, and determined that the net adjustment of -1 for a Class 1 meniscal injury yielded a final impairment rating of grade B, or 2 percent permanent impairment of appellant's right lower extremity. The DMA found that the date of MMI was February 28, 2023.

By decision dated May 2, 2023, OWCP granted appellant a schedule award for two percent permanent impairment of the right lower extremity. The award ran for 5.76 weeks from February 28 through April 9, 2023.⁴

On May 19, 2023 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 6, 2023 notice, OWCP's hearing representative informed appellant that his oral hearing was scheduled for October 6, 2023 at 9:30 a.m. Eastern Standard Time (EST). The notice included the toll-free number and passcode for access to the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant failed to appear for the hearing.

By decision dated October 18, 2023, OWCP found that appellant had abandoned his request for an oral hearing, because he had received written notification of the hearing 30 days in advance, but failed to appear. It further noted that there was no indication in the record that he had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain his failure to appear.

⁴ OWCP originally issued a schedule award decision on April 13, 2023, but failed to include Dr. Ralph's name and the date of Dr. White's report. It reissued a completed decision on May 2, 2023.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA,⁵ and its implementing federal regulations,⁶ 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 loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.⁷

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health (ICF): A Contemporary Model of Disablement*.⁸ Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ 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.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 percentage of permanent impairment using the A.M.A., *Guides*.¹²

In some instances, a DMA's opinion can constitute the weight of the medical evidence.¹³ This occurs in schedule award cases where an opinion on the percentage of permanent impairment

⁵ *Supra* note 2.

⁶ 20 C.F.R. § 10.404.

⁷ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

⁹ *Id.* at 494-531.

¹⁰ *Id.* at 521.

¹¹ *A.N.*, Docket No. 22-0999 (issued August 4, 2023); *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *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).

¹² *A.C.*, Docket No. 19-1333 (issued January 8, 2020); *B.B.*, Docket No. 18-0782 (issued January 11, 2019); *supra* note 7 at Chapter 2.808.6f (March 2017).

¹³ *See L.P.*, Docket No. 23-0570 (issued September 13, 2023); *J.G.*, Docket No. 21-0434 (issued August 16, 2022); *M.G.*, Docket No. 20-0078 (issued December 22, 2020); *R.R.*, Docket No. 19-1314 (issued January 3, 2020); *J.H.*, Docket No. 18-1207 (issued June 20, 2019); *M.P.*, Docket No. 14-1602 (issued January 13, 2015); *supra* note 7 at Chapter 2.810.8j (September 2010).

and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*.¹⁴ In this instance, a detailed opinion by a DMA may constitute the weight of the medical evidence, as long as he or she explains his or her opinion, shows values and computation of impairment based on the A.M.A., *Guides*, and considers each of the reported findings of impairment.¹⁵

ANALYSIS -- ISSUE 1

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

In a February 28, 2023 report, Dr. Ralph, the second opinion physician, opined that appellant had two percent permanent impairment of his right lower extremity. He explained that he utilized the DBI method to assign appellant's meniscal injury as a Class 1 impairment with a default value of C, for two percent permanent impairment, according to the A.M.A., *Guides* at Table 16-3 on page 509. Dr. Ralph did not provide grade modifiers or utilize the net adjustment formula. He, therefore, failed to properly explain how he calculated his impairment rating according to the A.M.A., *Guides*. As noted, in schedule award cases where an opinion on the percentage of permanent impairment from an examining physician is not based on the A.M.A., *Guides*, the opinion of the DMA constitutes the weight of the medical evidence, as long as the DMA explains his or her opinion, shows values and computation of impairment based on the A.M.A., *Guides*, and considers each of the reported findings of impairment.¹⁶

In a March 31, 2023 report, the DMA, Dr. White, determined that appellant had two percent permanent impairment of his right lower extremity. He explained that he based his opinion on the findings from the February 28, 2023 examination report of Dr. Ralph. The DMA found February 28, 2023 the date of MMI. He concurred with Dr. Ralph's selection of a Class 1 impairment for appellant's right knee meniscal injury, with a default value of C or two percent permanent impairment. The DMA also applied a GMPE of 0, a GMFH of 0, and a GMCS of 2. Dr. White provided his calculation of the net adjustment formula of $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (0 - 1) + (0 - 1) + (2 - 1) = -1$, and noted that the net adjustment of -1 for a Class 1 meniscal injury yielded a final grade B impairment rating or two percent permanent impairment of the right lower extremity.

As appellant has not established greater than two percent permanent impairment of the right lower extremity, for which he previously received a schedule award, the Board finds that he has not met his burden of proof.

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.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

LEGAL PRECEDENT -- ISSUE 2

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹⁷ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹⁸ OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.¹⁹

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.²⁰ The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.²¹ Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision, finding that the claimant abandoned the request for a hearing.

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's May 2, 2023 decision denying appellant's compensation claim, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a September 6, 2023 notice, OWCP's hearing representative informed appellant that his telephonic oral hearing was scheduled for October 6, 2023 at 9:30 a.m. EST. The hearing representative mailed the notice to appellant's last known address of record. The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule.²²

Appellant failed to call in for the scheduled hearing at the prescribed time and did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing

¹⁷ 20 C.F.R. § 10.616(a).

¹⁸ *Id.* at § 10.617(b).

¹⁹ *J.B.*, Docket No. 23-0591 (issued August 29, 2023); *W.R.*, Docket No. 22-1016 (issued September 30, 2022); *M.S.*, Docket No. 22-0362 (issued July 29, 2022); *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

²⁰ 20 C.F.R. § 10.622(f).

²¹ *Id.*

²² See *J.B.*, *M.S.*, *L.L.*, and *V.C.*, *supra* note 19.

within 10 days of the scheduled hearing. As appellant failed to call in to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining his failure to appear, the Board finds that OWCP properly determined that he abandoned his request for an oral hearing.²³

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than two percent permanent impairment of the right lower extremity for which he previously received a schedule award. The Board further finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

ORDER

IT IS HEREBY ORDERED THAT the May 2 and October 18, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 25, 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

²³ *Id.*