

¹ 5 U.S.C. § 8101 *et seq.*

her left knee, and felt a pop while in the performance of duty.² OWCP accepted the claim for tear of the lateral meniscus of the left knee. Appellant stopped work on June 29, 2013 and returned to modified-duty work on August 20, 2013 and full-duty work on May 7, 2014.

Dr. Jeffrey Shovers, a Board-certified orthopedic surgeon, performed a June 28, 2013 OWCP-authorized left knee arthroscopy with a partial lateral meniscectomy.

On January 25, 2023 appellant submitted a claim for compensation (Form CA-7) requesting a schedule award.

In a January 31, 2023 development letter, OWCP requested that appellant submit a report from her 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 she reached maximum medical improvement (MMI). It afforded her 30 days to submit additional medical evidence in support of her schedule award claim.

In a February 9, 2023 report, Dr. Mark T. Wichman, a Board-certified orthopedic surgeon, recounted appellant's accepted left knee injury with resultant partial lateral meniscectomy on June 28, 2013. He determined that she had developed arthritic changes in the left knee based on 2019 x-rays. Dr. Wichman opined that appellant had 10 percent permanent impairment of the left knee, 5 percent of which was due to the meniscal tear and surgery, and an additional 5 percent due to osteoarthritis that resulted due to the meniscal deficiency.

On March 7, 2023 OWCP referred the record to Dr. Michael M. Katz, a Board-certified orthopedic surgeon, 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 his March 9, 2023 report, Dr. Katz recommended a second opinion evaluation as Dr. Wichman's February 9, 2023 report did not reference to or conform to the A.M.A., *Guides*.

OWCP, on April 27, 2023, referred appellant, a statement of accepted facts (SOAF), a copy of the case record, and a series of questions to Dr. Joshua Alpert, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding her left lower extremity permanent impairment for schedule award purposes.

In a June 6, 2023 report, Dr. Alpert noted the history of the accepted employment injuries and appellant's subsequent medical treatment. He diagnosed a February 24, 2022 left knee ACL tear with surgery on August 31, 2011 including a left knee arthroscopic ACL reconstruction with

² OWCP assigned the present claim OWCP File No. xxxxxx868. Appellant has previously accepted traumatic injury claims for a March 24, 2011 left anterior cruciate ligament (ACL) sprain, and tears of the left lateral and medial menisci with an August 31, 2011 surgical ACL reconstruction and partial lateral meniscectomy, under OWCP File No. xxxxxx406; a May 28, 2014 tear of the lateral meniscus of the right knee and internal derangement of the right knee with a September 20, 2016 right knee arthroscopic debridement and partial lateral meniscectomy under OWCP File No. xxxxxx550; and a November 7, 2015 right knee cruciate ligament sprain, lateral and medial menisci tears, and pulmonary embolism with a July 18, 2023 schedule award for three percent of the right lower extremity under OWCP File No. xxxxxx420. OWCP has administratively combined OWCP File Nos. xxxxxx868, xxxxxx550, xxxxxx406, and xxxxxx420 on February 12, 2019 with the latter serving as the master file.

³ A.M.A., *Guides* (6th ed. 2009).

partial meniscectomy and a December 31, 2021 left knee lateral meniscal tear and June 28, 2013 left partial lateral meniscectomy. Dr. Alpert utilized the diagnosis-based impairment (DBI) rating method of the sixth edition of the A.M.A., *Guides* and referred to Table 16-3. He identified a diagnosis of lateral meniscal injury with partial meniscectomy surgery which resulted in a class of diagnosis (CDX) of Class 1 impairment and default value of two percent left lower extremity permanent impairment. Dr. Alpert noted that she had normal gait, normal motion, and no ligament instability on diagnostic testing on physical examination. He explained that the default impairment rating must be adjusted based on the grade modifiers, and assigned a grade modifier functional history (GMFH) of 0, based on absence of a gait abnormality or need for assistive devices; a grade modifier physical examination (GMPE) of 2 for a moderate problem; and a grade modifier clinical studies (GMCS) of 2, based on moderate pathology. Dr. Alpert applied the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (0 - 1) + (2 - 1) + (2 - 1) = 1$ and determined that the net adjustment of 1 for a Class 1 meniscal injury yielded a final impairment rating of grade D, or 2 percent permanent impairment of appellant's left lower extremity. He also determined that it was inappropriate to use knee arthritis as it was not the accepted condition from her injury. Dr. Alpert found that appellant had reached MMI on March 27, 2017.

OWCP referred Dr. Alpert's report to Dr. Katz, the DMA. In his July 4, 2023 report, Dr. Katz noted that appellant's left lower extremity impairment rating was calculated utilizing the DBI method only and that the ROM method was not applicable, as the DBI rating method was available. He referred to the sixth edition of the A.M.A., *Guides* at Table 16-3 (Knee Regional Grid), page 509, noted that her left knee findings were consistent with a CDX for meniscal injury with partial lateral meniscectomy, which resulted in a Class 1 impairment with a default impairment rating of two percent. Dr. Katz agreed with the GMPE and GMCS utilized by Dr. Alpert, but determined that in accordance with page 406 of the A.M.A. *Guides* GMFH should not be utilized as it differed by two or more grades from GMPE and GMCS. He applied the net adjustment formula of $(GMPE - CDX) + (GMCS - CDX) = (2 - 1) + (2 - 1) = 2$ and determined that the net adjustment of 2 for a Class 1 meniscal injury yielded a final impairment rating of grade E, or 3 percent permanent impairment of appellant's left lower extremity. Dr. Katz found that the date of MMI was June 6, 2023.

By decision dated July 17, 2023, OWCP granted appellant a schedule award for three percent permanent impairment of the left lower extremity. The award ran for 8.64 weeks from June 6 through August 5, 2023.⁴

On August 11, 2023 appellant requested reconsideration. In support of her request, she submitted an August 11, 2023 impairment rating evaluation report from Dr. Francis Saigh, a family practitioner, who included range of motion (ROM) figures for her left knee, including 91, 92, and 92 degrees of extension, with a flexion contracture of 5 degrees, and flexion of 89, 94, and 92 degrees. Dr. Saigh applied Table 16-23, page 549 of the A.M.A., *Guides* and found that she had 10 percent permanent impairment of her left lower extremity due to loss flexion, and 5 percent permanent impairment due to a 5 degree flexion contracture resulting in a ROM permanent impairment of 15 percent of the left lower extremity.

⁴ On August 8, 2023 OWCP combined appellant's claims.

On August 15, 2023 OWCP requested a supplemental report from Dr. Katz and provided him with Dr. Saigh's findings. In an August 17, 2023 report, Dr. Katz utilized the ROM figures reached by Dr. Saigh and determined that these resulted in GMPE of 2 and GMFH of 2, but did not result in a change in the impairment rating, as grade adjustments do not permit a change in class, regardless of the magnitude of the net adjustment, page 521, A.M.A., *Guides*. He noted that the method Dr. Saigh used in calculating appellant's permanent impairment was not consistent with the methodology set forth by the A.M.A., *Guides*. Regarding ROM methodology, the DMA explained that the key diagnostic factors were not eligible for an alternative ROM impairment rating in accordance with page 543, A.M.A., *Guides* and that this methodology was appropriate when no other diagnosis-based options were applicable in situations such as burns, severe scarring, multiple tendon laceration injuries, severe crush injuries, or residual compartment syndrome. Dr. Katz advised that appellant had three percent permanent impairment of the left lower extremity.

By decision dated August 25, 2023, OWCP denied modification of its July 17, 2023 decision regarding appellant's schedule award claim.

LEGAL PRECEDENT

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

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.

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 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

The Board finds that appellant has not met her burden of proof to establish greater than three percent permanent impairment of the left lower extremity for which she previously received a schedule award.

In a June 6, 2023 report, Dr. Alpert, the second opinion physician, opined that appellant had two percent permanent impairment of her left lower extremity. He explained that he used the DBI method to assign appellant's meniscal injury, 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. Alpert included all grade modifiers and utilized the net adjustment formula to reach 1 or grade D, two percent permanent impairment of the left lower extremity.

On August 11, 2023 Dr. Saigh provided an impairment rating evaluation report which included range of motion (ROM) figures for her left knee, including 91, 92, and 92 degrees of extension with a flexion contracture of 5 degrees, and flexion of 89, 94, and 92 degrees. He applied Table 16-23, page 549 of the A.M.A., *Guides* and found that she had 10 percent permanent impairment of her left lower extremity due to loss flexion, and 5 percent permanent impairment

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).

¹⁴ *Id.*

¹⁵ *Id.*

due to a 5-degree flexion contracture resulting in a ROM permanent impairment of 15 percent of the left lower extremity.

In July 4 and August 17, 2023 reports, the DMA, Dr. Katz, determined that appellant had three percent permanent impairment of her left lower extremity. He explained that he reviewed the findings from the June 6, 2023 examination report of Dr. Alpert and Dr. Saigh's August 11, 2023 examination report. The DMA noted that August 11, 2023 was the date of MMI. He agreed with Dr. Alpert's selection of a Class 1 impairment for appellant's left knee meniscal injury, with a default value of C or two percent permanent impairment. The DMA also provided a GMPE of 2, and GMCS of 2, and GMFH of 2. He explained that GMCS was not applicable, based on a review of the records. Dr. Katz provided his calculation of the net adjustment formula of $(GMFH - CDX) + (GMPE - CDX) = (2 - 1) + (2 - 1) = 2$, and noted that the net adjustment of 2 for a Class 1 meniscal injury yielded a final grade E impairment rating, or three percent permanent impairment of the left lower extremity. He explained that the A.M.A., *Guides* did not provide for the ROM methodology as described by Dr. Saigh as the diagnosis-based methodology was available.

The Board has reviewed Dr. Katz' opinion and finds that it conforms to the provisions of the A.M.A., *Guides*. Dr. Katz properly reviewed the medical evidence and evaluated appellant's impairment of the lower extremities in accordance with the A.M.A., *Guides*. There is no other current medical evidence in conformance with the sixth edition of the A.M.A., *Guides* establishing greater than the three percent permanent impairment of the right lower extremity for which appellant previously received a schedule award. Accordingly, appellant has not met her 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.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT July 17 and August 25, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 20, 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