

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

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**T.W., Appellant** )

**and** )

**U.S. POSTAL SERVICE, FREDERICK N.** )  
**WEATHERS POST OFFICE, St. Louis, MO,** )  
**Employer** )

**Docket No. 25-0800**  
**Issued: December 17, 2025**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 25, 2025 appellant, through counsel, filed a timely appeal from an August 1, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 18 percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

## FACTUAL HISTORY

On May 18, 2019 appellant, then a 36-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on May 18, 2019 she sustained a left foot sprain when her ankle rolled and she fell while in the performance of duty. She stopped work on May 18, 2019, and returned to limited duty on July 8, 2019. OWCP accepted the claim for an ankle sprain/sprain of unspecified ligament of left ankle. Appellant stopped work on September 26, 2019, and underwent an OWCP-approved left ankle arthroscopy with synovectomy, peroneous brevis tendon repair and open Brostrom repair. She returned to full-time work on February 19, 2020.<sup>3</sup> OWCP paid appellant wage-loss compensation on the supplemental rolls for the period July 3, 2019 through February 14, 2020.

In a January 18, 2024 report, Dr. James Brien, a Board-certified anesthesiologist, reported that appellant had two claim numbers under OWCP File Nos. xxxxxx029 and xxxxxx812 for the accepted conditions of sprain of unspecified site of left knee; sprain of anterior cruciate ligament of left knee; synovial cyst of popliteal space (Baker), left knee; other tear of lateral meniscus, left knee; other instability, left knee; and sprain of unspecified ligament of left ankle.<sup>4</sup> He reviewed medical records appellant provided and set forth physical examination findings for the left knee and left ankle. The left ankle had no evidence of ligamentous laxity or instability, was stable to varus/valgus stress, had negative Apley's and posterior drawer testing, mild positive left-side Lachman's testing and no crepitus through range of motion bilateral knees. Dr. Brien opined, that under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>5</sup> appellant had 13 percent permanent impairment of the left knee and 6 percent permanent impairment of the left ankle and hindfoot, for a final combined 18 percent permanent left lower extremity impairment under the diagnosed-based impairment (DBI) methodology. He indicated that the DBI methodology was the proper method to evaluate

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<sup>3</sup> OWCP assigned the current file OWCP No. xxxxxx029. Under OWCP File No. xxxxxx812, on October 20, 2020 appellant filed a traumatic injury claim (Form CA-1) alleging that she injured her left knee in the performance of duty on October 8, 2020. OWCP accepted the conditions of left knee sprain, left anterior cruciate ligament sprain of left knee, left knee Baker's cyst; tear of the lateral meniscus of the left knee, and left knee instability. Appellant underwent OWCP-authorized left knee arthroscopic surgery on March 18, 2021. By decision dated October 22, 2024, OWCP granted appellant a schedule award for 18 percent permanent impairment of the left knee. Under OWCP File No. xxxxxx353, on August 29, 2023 appellant filed a Form CA-1 alleging that on August 26, 2023 she sprained her left knee and left ankle in the performance of duty. OWCP accepted the claim for left lower leg muscle and tendon strain, and strain of the left ankle and foot muscle and tendon. Under OWCP File No. xxxxxx722, on September 28, 2024 appellant filed a Form CA-1 alleging that on even date she injured her left ankle in the performance of duty. OWCP accepted this claim for sprain of an unspecified ligament of the left ankle. OWCP has administratively combined these claims with OWCP File No. xxxxxx812 designated as the master file.

<sup>4</sup> An August 19, 2022 statement of accepted facts (SOAF) noted the accepted conditions in OWCP File Nos. xxxxxx029 and xxxxxx812 and that OWCP File No. xxxxxx029 was administratively combined with OWCP File No. xxxxxx812, the latter of which was designated as the master file. *See also id.*

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

appellant's impairments as the range of motion (ROM) methodology could not be used as a stand-alone rating. For the left knee, Dr. Brien assigned, pursuant to Table 16-3, page 509, a class of diagnosis (CDX) of 1 for the diagnosis of cruciate or collateral ligament injury, mild laxity. He found a grade modifier for functional history (GMFH) of 3; a grade modifier for physical examination (GMPE) of 2; and a grade modifier for clinical studies (GMCS) was not applicable. After applying the net adjustment formula, Dr. Brien found Class 1, grade E or final 13 percent lower extremity impairment. For the left foot and ankle, he assigned, pursuant to Table 16-2, page 501, a CDX of 1 for the diagnosis of strain, tendinitis, of history of ruptured tendon, peroneal brevis tendon; mild motion deficits. Dr. Brien noted a GMFH was not applicable as it was used in rating the knee; further noted a GMPE of 2; and found a GMCS was not applicable. After applying the net adjustment formula, he found a Class 1, grade D or final 6 percent left lower extremity impairment. Dr. Brien utilized the Combined Values Chart on page 604 and found the total left lower extremity impairment was 18 percent. He further opined that appellant had reached maximum medical improvement (MMI) on January 18, 2024.

On September 7, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On September 18, 2024 OWCP routed Dr. Brien's January 18, 2024 report, a December 7, 2021 statement of accepted facts (SOAF), and the case file to Dr. Herbert White, Jr., a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA) for review regarding appellant's left lower extremity permanent impairment.<sup>6</sup>

In an October 1, 2024 report, Dr. White noted his review of the December 7, 2021 SOAF and the medical record. For the left ankle, he concurred with Dr. Brien that the ROM impairment methodology could not be used. Under the DBI methodology, Dr. White set forth his impairment calculation and concurred with Dr. Brien that appellant had six percent impairment for Class 1, grade D for a peroneal tendon injury. He opined that appellant reached MMI on January 18, 2024 for the left ankle. Dr. White further advised he was unable to rate the left knee impairment as there were no diagnostic tests or surgical reports to verify the knee diagnosis or that the knee was at MMI.

On October 22, 2024 OWCP, under OWCP File No. xxxxxx812, OWCP granted appellant a schedule award for 18 percent permanent impairment of the left "knee." It related that the period of the award was from January 18, 2024 to January 14, 2025, for "362.88" weeks of compensation.<sup>7</sup>

In a letter dated October 25, 2024, OWCP requested that Dr. White review medical evidence from File No. xxxxxx812, which it enclosed, along with an August 19, 2022 SOAF, and

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<sup>6</sup> The most recent SOAF is dated August 19, 2022. *See supra* note 4.

<sup>7</sup> The Board notes that under 5 U.S.C. § 8107, the FECA schedule award provision, 288 weeks of compensation would be payable for 100 percent permanent impairment of a leg. An 18 percent permanent impairment of a leg would equal 51.84 weeks of compensation. The period of the award corresponds with an 18 percent permanent impairment of the leg.

provide an addendum report on appellant's left lower extremity impairment. It noted that appellant had received a schedule award for 18 percent left lower extremity impairment for the left knee.

In an October 31, 2024 amended report, Dr. White set forth his impairment calculations and concurred with Dr. Brien's DBI left lower extremity ratings of 13 percent impairment for the knee and 6 percent impairment for the ankle, for a final combined left lower extremity permanent impairment of 18 percent. He opined that the ROM impairment methodology was not applicable and MMI was reached on January 18, 2024. Dr. White further opined that no additional left lower extremity impairment was incurred under Section 2.5c (Apportionment) of the A.M.A., *Guides*, page 25. From the total impairment of 18 percent left lower extremity impairment, Dr. White subtracted the 18 percent prior award for appellant's left knee and found that no additional award was due.

By decision dated December 5, 2024, OWCP denied appellant's claim for an increased schedule award. The weight of the medical evidence was accorded to the opinions of Dr. Brien and Dr. White.

On April 28, 2025 appellant filed a Form CA-7 for an increased schedule award.

On July 18, 2025 appellant, through counsel, requested reconsideration and questioned why appellant was not entitled to a schedule award for the left ankle.

By decision dated August 1, 2025, OWCP denied modification.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>8</sup> and its implementing regulations<sup>9</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. 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.<sup>10</sup> As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>11</sup> 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.<sup>12</sup>

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<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404.

<sup>10</sup> *Id.* See also *A.S.*, Docket No. 20-1068 (issued April 15, 2025); *R.C.*, Docket No. 20-0274 (issued May 13, 2021); *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

<sup>12</sup> *A.S.*, *supra* note 10; *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

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 regard to the ankle, reference is made to Table 16-2 (Foot and Ankle Regional Grid) beginning on page 501. With regard to the knee, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509. After the CDX is determined from the applicable grid (including identification of a default grade value), the net adjustment formula is applied using a GMFH, a GMPE, and/or a GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>13</sup> Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>14</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>15</sup>

It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.<sup>16</sup>

### ANALYSIS

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

In accordance with its procedures, OWCP, on September 18, 2024, referred the medical record, including Dr. Brien's January 18, 2024 impairment report, along with a December 7, 2021 SOAF to Dr. White, its DMA. In a clarification request dated October 25, 2024, it also provided Dr. White with medical evidence from OWCP File No. xxxxx812 to review, which included an August 19, 2022 SOAF.

The Board notes that the December 7, 2021 SOAF provided to Dr. White as well as more recent August 19, 2022 SOAF of record are incomplete. The December 7, 2021 SOAF provided to Dr. White, its DMA, failed to include information regarding OWCP File No. xxxxx812 and the prior schedule award under that claim. Additionally, both the December 7, 2021 and the August 19, 2022 SOAF of record fail to list appellant's other accepted left lower extremity conditions under OWCP Files Nos. xxxxx353 and xxxxx722. OWCP's procedures and Board

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<sup>13</sup> See A.M.A., *Guides* 405-12. Table 15-5 also provides that, if motion loss is present for a claimant with certain diagnosed conditions, permanent impairment may alternatively be assessed using Section 15.7 (ROM impairment). Such a ROM assessment stands alone and is not combined with a DBI rating. *Id.* at 401-05, 475-78.

<sup>14</sup> *J.W.*, Docket No. 25-0587 (issued August 1, 2025); *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>15</sup> See *supra* note 11 at Chapter 2.808.6f (March 2017); see also *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

<sup>16</sup> 20 C.F.R. § 10.404(d); see *J.S.*, Docket No. 23-0579 (issued January 30, 2024); *S.M.*, Docket No. 17-1826 (issued February 26, 2018); *T.S.*, Docket No. 16-1406 (issued August 9, 2017); *T.S.*, Docket No. 09-1308 (issued December 22, 2009).

precedent dictate that, when an DMA for OWCP, second opinion specialist, or impartial medical examiner renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>17</sup>

It is well established that, proceedings under FECA are not adversarial in nature, and while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>18</sup> Once OWCP undertook development of the evidence, it had an obligation to do a complete job and obtain a proper evaluation and a report that would resolve the issue in this case.<sup>19</sup>

The Board will therefore set aside OWCP's August 1, 2025 decision and remand the case to OWCP. OWCP shall prepare a completed and accurate updated SOAF and request a supplemental opinion from Dr. White, the DMA, clarifying whether appellant has additional left lower extremity permanent impairment. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>17</sup> See *M.T.*, Docket No. 24-0457 (issued June 6, 2024); *R.S.*, Docket No. 23-1093 (issued March 12, 2024); *N.P.*, Docket No. 19-0296 (issued July 25, 2019); *M.D.*, Docket No. 18-0468 (issued September 4, 2018); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

<sup>18</sup> See *M.T.*, *id.*; *W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>19</sup> *J.K.*, Docket Nos. 19-1420 & 19-1422 (issued August 12, 2020); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 1, 2025 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 17, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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