United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 25-0803**
	)	**Issued: December 8, 2025**
U.S. POSTAL SERVICE, ROCHESTER PROCESSING & DISTRIBUTION CENTER, Rochester, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 25, 2025 appellant, through counsel, filed a timely appeal from an August 11, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

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

FACTUAL HISTORY

On October 20, 2020 appellant, then a 55-year-old electronics technician, filed a traumatic injury claim (Form CA-1) alleging that on October 16, 2020 he sustained a left knee strain when squatting by equipment while in the performance of duty. He stopped work on October 16, 2020.[3] OWCP accepted the claim for left knee sprain, left knee lateral collateral ligament sprain, left knee chondromalacia, and left knee lateral meniscus tear.

On September 20, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a letter dated October 4, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence required to establish his claim for a schedule award and afforded him 30 days to provide the necessary evidence. No evidence was received.

By decision dated November 15, 2022, OWCP denied appellant's claim for a schedule award, finding that appellant had not submitted evidence to establish that he sustained a permanent impairment of a scheduled member or function of the body.

On November 21, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received an October 26, 2022 report from Dr. Cristina Demian, a physician Board-certified in occupational medicine. Dr. Demian noted appellant's accepted conditions of left knee collateral ligament strain, left knee lateral meniscal tear, and left knee chondromalacia. She found that appellant had reached maximum medical improvement (MMI). Dr. Demian found that under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] appellant had 16 percent left lower extremity permanent impairment based on a diagnosis-based impairment (DBI) rating for lateral meniscal tear and lateral collateral ligament strain. She included her impairment calculations, which included 13 percent permanent impairment for collateral ligament injury due to mild laxity, and three percent permanent impairment for meniscal tear, for a combined rating of 16 percent permanent impairment of the left lower extremity.

On January 5, 2023 OWCP referred appellant's medical record and a statement of accepted facts (SOAF) to Dr. Herbert White, Jr., a Board-certified orthopedic surgeon serving as an OWCP

[3] Appellant retired from the employing establishment effective March 25, 2022.

[4] A.M.A., *Guides* (6th ed. 2009).

district medical adviser (DMA), to provide a permanent impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.

In a January 9, 2023 report, the DMA, Dr. White, agreed with Dr. Demian's permanent impairment calculation of 3 percent permanent impairment for left lateral meniscus tear, but disagreed with her finding of 13 percent permanent impairment for left collateral ligament injury. He related that appellant had zero percent permanent impairment for left lateral collateral ligament injury as he had no ligament instability. Next, the DMA advised that the range of motion (ROM) methodology could not be used to rate the accepted diagnoses.

Following a preliminary review, by a decision dated March 7, 2023, OWCP's hearing representative vacated the November 15, 2022 decision and remanded the case for further medical development.

OWCP subsequently received a February 22, 2023 addendum from Dr. Demian regarding appellant's permanent impairment evaluation. Dr. Demian maintained that mild laxity was present at the time of his physical examination and, therefore, the 13 percent impairment rating for lateral collateral ligament tear was correct. She stated that she did not consider the evaluation by a prior treating physician, as accurately reflecting appellant's left knee status at the time of her evaluation as that report was not as current as her evaluation.

On April 19, 2023 OWCP referred appellant's case to the DMA, Dr. White, for clarification and an addendum report.

In an addendum report dated April 21, 2023, the DMA reviewed Dr. Demian's February 22, 2023 report. He related that his permanent impairment rating remained unchanged. The DMA explained that Dr. Demian had not indicated any ligament laxity during appellant's physical examination, but had noted laxity in the permanent impairment rating.

By decision dated May 9, 2023, OWCP granted appellant a schedule award for three percent permanent impairment of the left lower extremity. The period of the award ran for 8.64 weeks for the period October 26 through December 25, 2022, and was based on the impairment findings of the DMA.

On May 15, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 12, 2023.

By decision dated March 25, 2024, OWCP's hearing representative set aside the May 9, 2023 decision and remanded the case to resolve the conflict in the medical opinion evidence between Dr. Demian and the DMA. It instructed OWCP to update the SOAF and refer appellant to an impartial medical examiner (IME) to assess the extent of appellant's permanent impairment.

On May 30, 2024 OWCP referred appellant, along with the case record, an updated SOAF, and a series of questions, to Dr. Ralph Salvagno, a Board-certified orthopedic surgeon, for an impartial medical examination and permanent impairment evaluation.

In a report dated July 5, 2024, Dr. Salvagno reviewed appellant's medical record, diagnostic data, and noted his history of injury, including his 1990 meniscal surgery and 2011 band release for peroneal nerve decompression. He provided appellant's physical examination findings and diagnosed post-traumatic left chondromalacia of the patella. Dr. Salvagno found no clinical or radiographic evidence of a lateral collateral ligament injury or meniscal tear. He related that neither diagnosis was reported in appellant's magnetic resonance imaging (MRI) scan reports of 2021 or 2022, nor could he confirm those diagnoses in his own personal review of the 2021 original MRI scan. On physical examination Dr. Salvagno found no acute lateral collateral ligament laxity and no meniscal signs. He provided a permanent impairment rating of appellant's left extremity utilizing the sixth edition of the A.M.A., *Guides*. Dr. Salvagno utilized the DBI rating methodology to find that, under Table 16-3 (Knee Regional Grid), page 511, the class of diagnosis (CDX) for appellant's left knee patellofemoral arthritis reflected a Class 1, grade C impairment, with a default value of three percent. He assigned a grade modifier for functional history (GMFH) of 1 based on minimal restrictions; and a grade modifier for physical examination (GMPE) of 1 based on mild subpatellar crepitus with discomfort. Dr. Salvagno assigned a grade modifier for clinical studies (GMCS) of 1 based on moderate pathology on imaging studies documenting mild subpatellar edema. He utilized the net adjustment formula, which resulted in three percent permanent impairment of the left lower extremity. Dr. Salvagno determined appellant's date of MMI to be October 26, 2022, the date of Dr. Demian's report.

On August 19, 2024 OWCP referred appellant's case record, including Dr. Salvagno's report, to Dr. James W. Butler, a Board-certified orthopedic surgeon serving as a DMA, for review.

In a September 6, 2024 report, Dr. Butler determined the date of MMI to be July 5, 2024, the date of Dr. Salvagno's IME report. He found that Dr. Salvagno had correctly applied the A.M.A., *Guides* and concurred with his impairment rating of three percent left lower extremity permanent impairment.

By *de novo* decision dated October 24, 2024, OWCP denied appellant's request for an additional schedule award.

On November 7, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated January 22, 2025, OWCP's hearing representative set aside the October 24, 2024 decision and remanded the case for further development. On remand, the hearing representative instructed OWCP to obtain a supplemental report from Dr. Salvagno clarifying whether laxity was excluded from the left lower extremity impairment rating, noting that the conflict was whether appellant had left knee laxity.

In a March 12, 2025 supplemental report, Dr. Salvagno found no evidence of ligamentous laxity for inclusion in the permanent impairment rating. He explained that his opinion was based on a May 10, 2022 MRI scan which showed intact tendon/ligaments, a February 22, 2023 note from another medical provider which did not note knee ligament laxity, and his physical examination findings of negative varus and valgus stress tests. Based on these facts, Dr. Salvagno found no indication to include ligamentous laxity in a permanent impairment rating since no laxity was present.

By *de novo* decision dated May 2, 2025, OWCP denied appellant's claim for an additional schedule award.

On May 6, 2025 appellant, through counsel requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated August 11, 2025, OWCP's hearing representative affirmed the May 2, 2025 decision.

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. However, FECA does not specify the manner in which the percentage of loss shall be determined. Through its implementing regulations, OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[7] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[8] 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.[9]

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that the DBI methodology is the primary method of calculation for the lower limb and that most impairments are based on the DBI where impairment class is determined by the diagnosis and specific criteria as adjusted by a GMFH, a GMPE, and/or a GMCS. It further provides that alternative approaches are also provided for calculating impairment for peripheral nerve deficits, complex regional pain syndrome, amputation, and ROM. ROM is primarily used as a physical examination adjustment factor.[10] The A.M.A., *Guides*, however, also explain that some of the diagnosis-based grids refer to the ROM section when that is the most appropriate mechanism for grading the impairment. This section is to be used as a stand-alone rating when other grids refer

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id. See also C.B.*, Docket No. 24-0757 (issued August 30, 2024); *V.J.*, Docket No. 1789 (issued April 8, 2020); *Jacqueline S. Harris*, 54 ECAB 139 (2002); *Ronald R. Kraynak*, 53 ECAB 130 (2001).

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

[9] *C.B.*, *supra* note 7; *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[10] A.M.A., *Guides* 497, section 16.2.

to this section or no other diagnosis-based sections of the chapter are applicable for impairment rating of a condition.[11]

In determining permanent impairment of 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 knees, reference is made to Table 16-3 (Knee Regional Grid).[12] Under that table, after the diagnosis and the CDX is determined, a default grade value is identified, the net adjustment formula is then applied. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13]

When OWCP obtains an opinion from an IME for the purpose of resolving a conflict in medical opinion evidence and the specialist's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.[14] However, when the IME is unable to clarify or elaborate on the original report or if a supplemental report is also vague, speculative or lacking in rationale, OWCP must submit the case record and a detailed SOAF to a second IME for the purpose of obtaining a rationalized medical opinion on the issue.[15]

ANALYSIS

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

OWCP properly declared a conflict in medical opinion between Dr. Demian, appellant's treating physician, and Dr. White, the DMA, regarding appellant's left lower extremity permanent impairment rating. Dr. Demian found 3 percent permanent impairment for left meniscal tear and 13 percent permanent impairment for left lateral collateral ligament injury, utilizing the DBI methodology, while Dr. White rated appellant's left lower extremity permanent impairment as three percent permanent impairment based on appellant's left knee meniscal tear. This conflict required referral to an IME pursuant to 5 U.S.C. § 8123(a).

OWCP thereafter selected Dr. Salvagno as an IME to resolve the conflict in the medical opinion evidence. The Board finds that Dr. Salvagno's opinion contradicts the SOAF, which makes clear that OWCP had accepted the following conditions as employment related: left knee sprain, left knee lateral collateral ligament sprain, left knee chondromalacia, and left lateral meniscus tear. Dr. Salvagno disregarded the accepted conditions noted in the SOAF and opined that appellant had no evidence of left lateral meniscus tear or left knee lateral collateral ligament

[11] *Id.* at 543; *see also C.B.*, *supra* note 7; *M.D.*, Docket No. 16-0207 (issued June 3, 2016); *D.F.*, Docket No. 15-0664 (issued January 8, 2016).

[12] *Id.*at 509-11.

[13] *Id.* at 515-22.

[14] *A.W.*, Docket No. 25-0542 (issued June 24, 2025); *G.C.,* Docket No. 24-0718 (issued September 19, 2024); *Raymond A. Fondots,* 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner),* 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.,* 39 ECAB 736 (1988); *Harold Travis,* 30 ECAB 1071, 1078 (1979).

[15] *A.W.*, *id.*; *Nancy Keenan,* 56 ECAB 687 (2005); *Roger W. Griffith,* 51 ECAB 491 (2000); *Talmadge Miller,* 47 ECAB 673 (1996); *Harold Travis, id*.

sprain based upon 2021 and 2022 MRI scan evidence or physical examination. OWCP's procedures provide that, when a referee physician selected by OWCP 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.[16] The Board has held that, if a referee physician does not base his or her opinion on the SOAF, the opinion lacks a proper factual background and, thus, is not rationalized.[17] As Dr. Salvagno's opinion is inconsistent with the SOAF, the Board finds that it is insufficient to resolve the existing conflict in medical opinion.[18]

Accordingly, there remains an unresolved conflict in medical evidence. On remand, OWCP shall refer appellant, his medical record, and a SOAF to another physician in the appropriate field of medicine to resolve the existing conflict as to the extent of any additional permanent impairment, causally related to the accepted left knee conditions. After this and such other further development as deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[16] *Supra* note 8 at Chapter 2.810.11 (September 2010); *see R.D.*, Docket No. 20-1052 (issued January 5, 2022); *R.T.*, Docket No. 20-0081 (issued June 24, 2020); *Roger W. Griffith*, 51 ECAB 491 (2000).

[17] *T.M.*, Docket No. 20-1143 (issued December 14, 2020); *P.C.*, Docket No. 19-1468 (issued September 9, 2020); *D.M.*, Docket No. 17-1563 (issued January 15, 2019).

[18] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2025 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: December 8, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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