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<b>A.C., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 25-0185</b>
	)	<b>Issued: February 11, 2025</b>
<b>U.S. POSTAL SERVICE, POCOSHOCK</b>	)	
<b>CREEK POST OFFICE, North Chesterfield, VA,</b>	)	
<b>Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On December 18, 2024, appellant filed a timely appeal from an October 29, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

<sup>2</sup> The Board notes that, following the October 29, 2024 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish greater than 32 percent permanent impairment of her right lower extremity, for which she previously received a schedule award.

## **FACTUAL HISTORY**

On July 14, 2017 appellant, then a 47-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 13, 2017 she injured her right hip when she fell after dismounting her long life vehicle (LLV) while in the performance of duty. She stopped work and underwent surgery on the date of injury, including right closed reduction and percutaneous screw fixation. OWCP accepted the claim for right displaced femoral neck fracture.

In a report dated November 6, 2018, Dr. Joshua B. Macht, a Board-certified internist, evaluated appellant's permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> He diagnosed postoperative state of right hip, status post repair of femoral neck fracture, and osteoarthritic changes and suprapatellar effusion of the right knee. Dr. Macht found eight percent permanent impairment of the right lower extremity due to the right hip and 26 percent permanent impairment of the right lower extremity due to the right knee, for a total of 32 percent permanent impairment of the right lower extremity. He opined that appellant had reached maximum medical improvement (MMI) as of October 29, 2018.

On November 13, 2018, appellant filed a claim for compensation (Form CA-7) for a schedule award.

OWCP referred the case record, along with a statement of accepted facts (SOAF) to Dr. Jovito Estaris, a Board-certified occupational medicine specialist and general surgeon, serving as a district medical adviser (DMA), for review.

In a report dated February 11, 2019, Dr. Estaris evaluated appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.<sup>4</sup> He found eight percent permanent impairment of the right lower extremity due to the right hip and 26 percent permanent impairment of the right lower extremity due to the right knee, for a total of 32 percent permanent impairment of the right lower extremity. Dr. Estaris opined that appellant had reached MMI as of October 29, 2018.

By decision dated March 6, 2019, OWCP granted appellant a schedule award for 32 percent permanent impairment of the right lower extremity. The award ran from October 29, 2018 through August 4, 2020.

On November 15, 2023, appellant underwent surgery to her right hip, including right femoral neck fixation and removal of deep hardware, by Dr. Ryan Robertson, a Board-certified

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>4</sup> *Id.*

orthopedic surgeon. His postoperative diagnosis was right femoral neck fracture sequela and right hip symptomatic painful prominent hardware.

On April 21, 2024, appellant filed a Form CA-7 claim for an increased schedule award.

In a letter dated April 30, 2024, OWCP informed appellant of the deficiencies of her increased schedule award claim. It advised her of the type of medical evidence necessary to establish an entitlement to an increased schedule award under the sixth edition of the A.M.A., *Guides*.<sup>5</sup>

On July 30, 2024, OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Charles W. Kennedy, an orthopedist, for a second opinion examination and evaluation of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a report dated September 9, 2024, Dr. Kennedy reviewed the SOAF and appellant's medical record. He performed a physical examination of her right hip, which revealed a healed incision and reduced flexion to 80 degrees. Dr. Kennedy opined that appellant had reached MMI on the date of his examination. Utilizing the diagnosis-based impairment (DBI) rating method, he referenced Table 16-4, Hip Regional Grid: Lower Extremity Impairments, page 514, and found that the class of diagnosis (CDX) of femoral neck intertrochanteric fracture with mild limitation of motion and mild alignment was a Class 1 impairment with a default value of seven percent. Dr. Kennedy assigned a grade modifier for functional history (GMFH) of 2, a grade modifier for physical examination (GMPE) of 2, and a grade modifier for clinical studies (GMCS) of 2. He utilized the net adjustment formula, which resulted in eight percent permanent impairment of the right lower extremity due to the right hip conditions.

On October 7, 2024, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as OWCP's DMA, reviewed Dr. Kennedy's September 9, 2024 report. He applied the DBI rating method to Dr. Kennedy's findings and found that appellant had nine percent permanent impairment of the right lower extremity due to her right hip conditions. Under Table 16-4, Hip Regional Grid: Lower Extremity Impairments, page 514, Dr. Hammel found the CDX for hip fracture with mild motion loss was a Class 1 impairment and assigned a GMFH of 2 and a GMPE of 2 and noted that a GMCS was not applicable as it was used to set the class. He utilized the net adjustment formula, which resulted in a grade E or nine percent permanent impairment of the right lower extremity. Dr. Hammel indicated that no additional award was due, as "this award is identical to prior awards for the femoral neck." He found no permissible range of motion (ROM) permanent impairment and explained that lower extremity stand-alone ROM-based impairment under the A.M.A., *Guides* was not the preferred method in the absence of extenuating circumstances. Dr. Hammel opined that appellant had reached MMI on September 9, 2024, the date of Dr. Kennedy's impairment examination.

By decision dated October 29, 2024, OWCP denied appellant's claim for an increased schedule award.

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<sup>5</sup> It noted that the accepted conditions included fracture of neck of right femur and pain due to internal orthopedic prosthetic devices.

## LEGAL PRECEDENT

The schedule award provisions of FECA<sup>6</sup> and its implementing regulations<sup>7</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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>8</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.<sup>9</sup>

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.<sup>10</sup> OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.<sup>11</sup>

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): A Contemporary Model of Disablement*.<sup>12</sup> Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by a GMFH, a GMPE, and/or a GMCS.<sup>13</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>14</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>15</sup>

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<sup>6</sup> *Supra* note 1.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.*; see also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>10</sup> *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>11</sup> *Supra* note 9 at Chapter 2.808.5 (March 2017).

<sup>12</sup> A.M.A., *Guides*, page 3, section 1.3.

<sup>13</sup> *Id.* at 493-556.

<sup>14</sup> *Id.* at 521.

<sup>15</sup> *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.<sup>16</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's 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.<sup>17</sup>

### ANALYSIS

The Board finds this case not in posture for decision.

OWCP referred appellant to Dr. Kennedy for a second opinion evaluation. In his September 9, 2024 report, Dr. Kennedy documented examination findings and permanent impairment for the right hip; however, he did not address appellant's preexisting right knee condition. As noted above, in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.<sup>18</sup>

While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>19</sup> Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.<sup>20</sup>

The case must, therefore, be remanded for further development. On remand, OWCP shall request a supplemental opinion from Dr. Kennedy explaining the affect, if any, that appellant's preexisting right knee condition has on her right lower extremity permanent impairment.<sup>21</sup> Dr. Kennedy shall also explain whether his impairment rating is in addition to the prior schedule award. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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<sup>16</sup> *C.J.*, Docket No. 21-1389 (issued July 24, 2023); *T.W.*, Docket No. 16-1818 (issued December 28, 2017); *see B.M.*, Docket No. 09-2231 (issued May 14, 2010); *supra* note 9 at Chapter 3.700.3(a)(3) (January 2010); *Dale B. Larson*, 41 ECAB 481 (1990); *Beatrice L. High*, 57 ECAB 329 (2006) (OWCP's procedures provide that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function).

<sup>17</sup> *See supra* note 9 at Chapter 2.808.6(f) (March 2017); *see also J.T.*, Docket No. 17-1465 (issued September 25, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

<sup>18</sup> *Supra* note 16.

<sup>19</sup> *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>20</sup> *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

<sup>21</sup> *See C.J.*, *supra* note 16.

**CONCLUSION**

The Board finds this case not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 29, 2024 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: February 11, 2025  
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