United States Department of Labor
Employees' Compensation Appeals Board

K.M., widow of W.M., Appellant	)	
and	)	**Docket No. 25-0412**
	)	**Issued: July 1, 2025**
U.S. POSTAL SERVICE, WORCESTER POST OFFICE, Worcester, MA, Employer	)	

Appearances:
Erik B. Blowers, Esq., for the appellant[1]
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 December 10, 2024 appellant, through counsel, filed a timely appeal from an October 4, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).[2]

[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] Appellant, through counsel, submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). In support of the oral argument request, counsel asserted that oral argument should be granted to provide an opportunity for a dialog, which fully addresses the issues presented. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence. As such, the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. Therefore, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

Pursuant to the Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 26 percent permanent impairment of the employee's right lower extremity (leg) and 31 percent permanent impairment of the employee's left lower extremity (leg), for which she previously received schedule award compensation.

FACTUAL HISTORY

On August 23, 2016 the employee, then a 65-year-old retired city letter carrier[4], filed an occupational disease claim (Form CA-2) alleging that he developed osteoarthritis in his knees due to factors of his federal employment. He first became aware of his condition and realized its relationship to his federal employment on June 21, 2016. On the reverse side of the claim form, the employing establishment indicated that the employee's last date of exposure was June 30, 2015.

OWCP accepted the claim for permanent aggravation right knee and left knee degenerative arthritis.

In a January 18, 2017 report, Dr. Bryon Hartunian, an orthopedic surgeon, provided examination findings of appellant's lower extremities, which included three range of motion (ROM) measurements for findings of flexion 107 degrees and extension 0 degrees for both knees. He diagnosed status post left total knee replacement for end-stage degenerative arthritis and primary right knee joint arthritis with 2 millimeters (mm) of cartilage interval at the medial femoral-tibial joint. Dr. Hartunian provided a permanent impairment rating under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[5] and found a diagnosis-based impairment (DBI) under Table 16-3, Knee Regional Grid, of 18 percent permanent impairment of the right lower extremity and 37 percent permanent impairment of the left lower extremity. He indicated that appellant had reached maximum medical improvement (MMI) of his right knee on July 15, 2013, and of his left total knee replacement on February 19, 2016. Dr. Hartunian's impairment calculations as well as a June 21, 2016 American Academy of Orthopaedic Surgeons (AAOS) lower limb questionnaire was provided.

On February 12, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On February 22, 2018 OWCP referred appellant's case and a February 22, 2018 statement of accepted facts (SOAF) to Dr. Jovito Estaris, a Board-certified occupational medicine specialist

[3] 5 U.S.C. § 8101 *et seq*.

[4] The employee retired from the employing establishment on July 1, 2015.

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

and general surgeon serving as an OWCP district medical adviser (DMA), to provide an impairment rating of the lower extremities in conformity with the A.M.A., *Guides.*

In a February 28, 2018 report, Dr. Estaris, serving as DMA, opined, based on Dr. Hartunian's report, that the employee had reached MMI on July 15, 2013 for the right lower extremity and on February 19, 2016 for the left lower extremity. He concurred that the employee had 18 percent permanent impairment of the right lower extremity but provided 31 percent permanent impairment of the left lower extremity based on the DBI methodology, which was higher than the alternative range of motion (ROM) impairment methodology which had yielded 11 percent permanent impairment. Dr. Estaris indicated that Dr. Hartunian inconsistently used the AAOS score as the grade modifier for functional history (GMFH) and that the grade modifier for physical examination (GMPE) should have been used as an adjustment.

In an April 13, 2018 addendum report and in a March 11, 2019 report, Dr. Hartunian asserted that his impairment calculations and application of the AAOS in the GMFH were correct.

On March 25, 2019 OWCP determined that a conflict in medical opinion existed between Dr. Hartunian, the treating physician, and Dr. Estaris, the DMA, regarding the extent of the lower extremity impairment ratings and whether the A.M.A., *Guides* were correctly applied. It referred appellant, along with the medical record, a February 20, 2019 SOAF, and a series of questions to Dr. Terry F. Reardon, a Board-certified orthopedic surgeon, serving as the impartial medical examiner (IME), to determine the extent of permanent impairment of the lower extremities.

In a May 1, 2019 report, Dr. Reardon reviewed the medical evidence of record and the February 20, 2019 SOAF. He opined that the employee had reached MMI to his left knee one year after his total knee replacement on February 24, 2016. With regard to the right knee, Dr. Reardon opined that MMI was on June 21, 2016 as the employee had not required any specific invasive procedures and has had a stable activity level. He noted examination findings for both lower extremities, including goniometer measurements of left knee ROM of 110 degrees of flexion and right knee ROM of 105 degrees of flexion, and that a right knee x-ray report showed 2 mm of joint space on the medial side. Dr. Reardon agreed with both Dr. Hartunian and Dr. Estaris, the DMA, that the employee had 18 percent permanent impairment of the right lower extremity. For the left lower extremity, he disagreed with Dr. Hartunian that appellant had Class 3, grade C fair result after a total knee replacement, finding that there was a Class 2, grade C good result after total knee replacement for 25 percent permanent impairment of the left lower extremity.

On September 9, 2019 OWCP referred appellant's case record, along with a February 20, 2019 SOAF, to Dr. Morley Slutsky, a Board-certified orthopedic surgeon serving as the DMA for a permanent impairment rating. In a September 17, 2019 report, Dr. Slutsky indicated that Dr. Reardon's report lacked evaluation findings, reasoning, and proper calculations under the A.M.A., *Guides*.

On January 22, 2020 OWCP requested an addendum report from Dr. Reardon to clarify his permanent impairment rating. In a March 3, 2020 response, Dr. Reardon opined that there was no requirement for further documentation.

On March 18, 2021 OWCP referred the employee, along with a February 11, 2021 SOAF, and a series of questions, to Dr. John Siliski, a Board-certified orthopedic surgeon, for a new impartial examination and rating of permanent impairment to the lower extremities.

In a June 8, 2021 report, Dr. Siliski, the IME, noted the accepted diagnoses according to the SOAF, performed a records review, and provided examination findings, noting that ROM for both knees was 10-90 degrees. He opined that appellant had reached MMI regarding the left total knee replacement but had not reached MMI regarding the arthritic right knee, as it may ultimately undergo replacement. For the left knee, Dr. Siliski, utilizing Table 16-3 of the knee regional grid, opined that appellant had Class 3, grade C for total knee replacement which resulted in 37 percent permanent impairment of the left lower extremity. For the right knee, Dr. Siliski utilized ROM methodology and opined, under Table 16-3, that the employee's knee arthritis was Class 2 as the last available x-ray showed a 2 mm interval. He further found that the arthritis was grade D, as there was significant stiffness, which resulted in 22 percent permanent impairment of the right lower extremity.

In an August 15, 2021 report, Dr. Slutsky, serving as the DMA, noted that Dr. Siliski had failed to document the knee ROM and document the application of the required grade modifiers for each impairment rating. On September 22, 2021 OWCP requested an addendum report from Dr. Siliski to clarify his permanent impairment rating.

In a January 31, 2022 addendum report, Dr. Siliski indicated that he had performed three evaluations of ROM for both flexion and extension of the left knee, which were equal. He also indicated that the A.M.A., *Guides* were just guides and ROM was treated qualitatively, not quantitatively. Regarding the left knee, Dr. Siliski indicated that the employee had a fair result based upon mild motion deficiency, and thus, under Table 16-3, he had a Class 3, grade C or 37 percent permanent impairment. Under Table 16-5, he found no alteration in the class, as motion had been included in the Class 3 designation. Thus Dr. Siliski opined that appellant had 37 percent permanent impairment of the left lower extremity. Regarding the right knee, he opined that under Table 16-3, the employee's primary knee joint arthritis was Class 2, grade C as the most recently available knee x-ray showed a 2 mm cartilage interval. Dr. Siliski found that Table 16-7, physical examination adjustment, and Table 16-5, adjustment grid, adjustment based on limited motion was permissible. Thus, he opined that the limited motion in the employee's right knee permitted an adjustment to grade D, which resulted in 22 percent permanent impairment of the right lower extremity.

On April 5, 2022 OWCP referred the case to Dr. Slutsky, the DMA, for a review of Dr. Siliski's January 31, 2022 addendum report. In an April 18, 2022 report, Dr. Slutsky reported that right knee x-rays which Dr. Siliski referenced appeared to be based on 2017 x-ray findings. He indicated that April 1, 2019 right knee x-rays demonstrated that the medial compartment joint space interval measured 1.0 mm, which was indicative of a Class 3 rating under Table 16-3. Dr. Slutsky recommended that Dr. Siliski provide the ROM measurements for both knees as ROM was a key factor for the left knee and a nonkey factor for the right knee. He noted that as Dr. Siliski did not discuss grade modifiers for either knee, it was inappropriate to assign a final grade without such a discussion. Using Dr. Siliski's examination findings, Dr. Slutsky opined that, under the DBI methodology, the employee had 31 percent permanent impairment of the left lower extremity and 16 percent permanent impairment of the right lower extremity. He further opined that the

employee reached MMI on June 8, 2021, the date of Dr. Siliski's impairment examination. Dr. Siliski did not respond to OWCP's June 3, 2022 request to provide an addendum report.

On September 15, 2022 OWCP scheduled the employee for a new IME examination with Dr. Paul Murray, a Board-certified orthopedic surgeon. The examination, which was originally scheduled for October 4, 2022, was rescheduled for December 7, 2022. However, on November 22, 2022, the employee passed away.

In a May 25, 2023 report, Dr. Murray, the IME, conducted an administrative records review. He opined that the employee had reached MMI on June 8, 2021, the date Dr. Siliski performed an impairment evaluation. Dr. Murray indicated that the most impairing diagnosis was an arthroplasty with fair result for the left knee and primary knee arthritis with 1 mm of narrowing in the primary component for the right knee. He concurred with the DMA, Dr. Slutsky, that the employee had 31 percent permanent impairment of the left lower extremity and 26 percent permanent impairment of the right lower extremity. No discussion of the impairment ratings was provided.

In an August 22, 2023 report, Dr. Hartunian opined, based on Dr. Siliski's June 8, 2021 physical examination findings, that appellant had 67 percent permanent impairment of the left lower extremity and 32 percent permanent impairment of the right lower extremity.

By decision dated October 4, 2023, OWCP awarded appellant a posthumous schedule award for 31 percent permanent impairment of the left lower extremity (leg) and 26 percent permanent impairment of the right lower extremity (leg). The period of the award ran for 164.16 weeks for the period June 8, 2021 through July 31, 2024.[6] The special weight of the medical evidence was accorded to Dr. Murray's May 25, 2023 IME report.

On October 16, 2023 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 November 29, 2023, an OWCP hearing representative vacated the October 4, 2023 schedule award, finding that the case was not in posture for decision as Dr. Murray's May 25, 2023 IME report was deficient in resolving the conflict in medical opinion.

On December 15, 2023 OWCP requested that Dr. Murray review an updated December 15, 2023 SOAF, the medical conflict memorandum, and the medical record to resolve the conflict of medical opinion between Dr. Hartunian and Dr. Slutsky, the DMA, with regard to the percentage of permanent impairment of the left and right lower extremities and to provide an addendum report. It noted that Dr. Hartunian had opined the employee had 67 percent permanent impairment of the left lower extremity and 32 percent permanent impairment of the right lower extremity which exceeded the September 17, 2019 and August 15, 2021 impairment ratings of Dr. Slutsky, the DMA. Dr. Murray did not respond to OWCP's request to provide an addendum report.

On February 27, 2024 OWCP referred the December 15, 2023 SOAF, the medical conflict memorandum, and the employee's medical record to Dr. Douglas Kirkpatrick, a Board-certified

[6] OWCP indicated that appellant was paid compensation at the 3/4 or 75 percent rate for the period June 8, 2021 through November 22, 2022, and at the 2/3 or 66 2/3 percent rate from November 23, 2022 and continuing.

orthopedic surgeon serving as a new IME, to resolve the conflict of medical opinion between Dr. Hartunian and Dr. Slutsky, the DMA, with regard to the percentage of permanent impairment of the employee's lower extremities.

In a March 18, 2024 report, Dr. Kirkpatrick reviewed the employee's medical records along with the December 15, 2023 SOAF. For the left knee, he indicated that the employee had a left total knee replacement on February 24, 2015, his treating physician had found him at MMI with good outcome as of February 19, 2016, and that all the examining reviewers had agreed that the left knee position was appropriate on x-ray and the employee had no instability as it related to his knee replacement. Dr. Kirkpatrick further noted that there was no additional documentation of x-ray abnormalities or instability noted on subsequent examinations. With regard to ROM of the left knee, he noted that the only examination that provided three measurements consistent with A.M.A., *Guides* was Dr. Hartunian's January 18, 2017 examination, which had measured both knees at full extension to 107 degrees with a goniometer, and there was no discrepancy regarding appropriate placement by x-ray or instability issues with the total knee replacement. Dr. Kirkpatrick also indicated that multiple examiners had mentioned the presence of a limp with no requirement of a cane, which under Table 16-6, equated to a grade modifier functional history (GMFH) of 1. He indicated that Dr. Hartunian's indication of a grade 3 GMFH based on the AAOS lower extremity assessment was at odds with a GMFH of 3 under the A.M.A., *Guides* and inconsistent with other functional history factors and the employee's history.

Based on the above factors for the left knee, Dr. Kirkpatrick opined that the employee reached MMI on February 19, 2016. Utilizing the ROM methodology for the employee's left knee, he opined, under Table 16-23, that the employee had a mild or 10 percent lower extremity impairment. Utilizing the diagnosis-based impairment (DBI) rating method, Dr. Kirkpatrick opined that, under Table 16-3, the class of diagnosis (CDX) for the employee's left total knee replacement, with fair result, resulted in a Class 3 impairment with a default value of 37 percent. He assigned a GMFH of 1, noted that there were no imaging studies available to assign a grade modifier for clinical studies (GMCS) and that the GMPE was not applicable. Dr. Kirkpatrick utilized the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 – 3) = -2 which resulted in grade A or 31 percent permanent impairment of the left lower extremity. He indicated that while Dr. Hartunian provided a higher assessment of 67 percent impairment in his August 22, 2023 report, this was based on Dr. Siliski's inadequate ROM values as they were inappropriately documented and represented a significant outlier with respect to range of motion. Dr. Kirkpatrick opined that for the left lower extremity, appellant had 31 percent permanent impairment based on the DBI rating method as it yielded a greater impairment than the ROM methodology.

For the employee's right lower extremity, Dr. Kirkpatrick utilized Dr. Hartunian's January 18, 2017 measurements of 0-107 degrees as they were the only appropriately documented ROM measurements. He noted that while Dr. Reardon's May 2019 ROM findings were similar, they were not used as it was inappropriately documented. Likewise, Dr. Siliski's June 2021 ROM measurements were not used as they were inappropriately documented. For the ROM rating method, Dr. Kirkpatrick found, under Table 16-23, a mild or 10 percent permanent impairment. Under the DBI rating method, Dr. Kirkpatrick found that the last measured cartilage interval was on April 25, 2019, in which the right knee medial compartment was measured at 1 mm. He elected the date of April 25, 2019 as the date the employee reached MMI as there was no other objective

date to support a worsening past that date. Dr. Kirkpatrick utilized the DBI rating method to find, under Table 16-3, the CDX for the employee's right knee primary joint osteoarthritis, resulted in a Class 3 impairment with a default value of 30 percent. He assigned a GMFH of 1, as previously explained, and a GMPE of 1, which included his documented range of motion. Dr. Kirkpatrick utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) = (1 - 3) + (1 - 3) = -4, and found a grade A or 26 percent permanent impairment of the right lower extremity. He further opined that as the DBI rating method yielded the higher impairment, the employee had 26 percent permanent impairment of the right lower extremity.

By *de novo* decision dated April 22, 2024, OWCP granted appellant a posthumous schedule award for 31 percent permanent impairment of the left lower extremity (leg) and 26 percent permanent impairment of the right lower extremity (leg), for which she has previously received schedule award compensation. It adjusted the date of MMI from June 8, 2021 to February 19, 2016 but maintained the period of the schedule award for 164.16 weeks from June 8, 2021 through July 31, 2024. OWCP accorded the special weight of the medical evidence to the opinion of Dr. Kirkpatrick, the IME.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA[7] and its implementing regulations[8] 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. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has concurred in such adoption.[9] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.[10]

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: A Contemporary Model of Disablement*.[11] Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by a GMFH, GMPE, and/or a GMCS.[12] The net adjustment formula is (GMFH - CDX) + (GMPE -

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Id.* at § 10.404 (a); *see also W.H.*, Docket No. 24-0855 (issued November 25, 2024); *J.C.*, Docket No. 21-0288 (issued July 1, 2021); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[10] 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 3.700.2 and Exhibit 1 (January 2010).

[11] A.M.A., *Guides* 3, section 1.3.

[12] *Id.* at 383-492.

CDX) + (GMCS - CDX).[13] 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.[14]

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States, and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.[15] For a conflict to arise, the opposing physicians' viewpoints must be of virtually equal weight and rationale.[16] When OWCP has referred the case to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[17]

When OWCP obtains an opinion from an IME for the purpose of resolving a conflict in medical opinion, and the IME's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.[18] If the IME is unable to clarify or elaborate on his original report, or if his supplemental report is vague, speculative, or lacking in rationale, OWCP shall refer appellant to a new IME.[19]

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 OWCP's medical adviser providing rationale for the percentage of impairment specified.[20]

Section 8109(a) of FECA provides that if an individual has sustained disability compensable under section 8107(a), has filed a valid claim in his lifetime, and dies from a cause other than the injury before the end of the period specified by the schedule, the compensation specified by the schedule that is unpaid at his death, whether or not accrued or due at his death,

[13] *Id.* at 411.

[14] *W.H., supra* note 9; *J.C.*, Docket No. 21-0288 (issued July 1, 2021); *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).

[15] 5 U.S.C. § 8123(a); *see A.P.*, Docket No. 22-1054 (issued January 6, 2023); *R.S.,* Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

[16] *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *C.H.*, Docket No. 18-1065 (issued November 29, 2018); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 31 ECAB 1010 (1980).

[17] *S.S.*, Docket No. 19-0766 (issued December 13, 2019); *W.M.*, Docket No. 18-0957 (issued October 15, 2018); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[18] *R.T.,* Docket No. 20-0081 (issued June 24, 2020); *Raymond A. Fondots,* 53 ECAB 637, 641 (2002); *Harold Travis,* 30 ECAB 1071, 1078 (1979).

[19] *See C.E.,* Docket No. 19-1923 (issued March 30, 2021); *M.S.,* Docket No. 18-1228 (issued March 8. 2019); *R.H.,* Docket No. 17-1903 (issued July 5, 2018); *Harold Travis, id.*

[20] *See supra* note 10 at Chapter 2.808.6f (March 2017).

shall be paid, under an award made before or after the death and for the period specified by the schedule, to designated surviving beneficiaries.[21]

OWCP procedures further provide that, if at the time of the claimant's death, a schedule award claim is being developed but has not yet been paid, the claimant's dependent(s) would be entitled to the entire payment of the award.[22]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish greater than 26 percent permanent impairment of the employee's right lower extremity (leg) and 31 percent permanent impairment of the employee's left lower extremity (leg), for which she has previously received schedule award compensation.

OWCP accepted that the employee developed a permanent aggravation of right and left knee degenerative arthritis while in the performance of duty. The employee submitted medical evidence in support of a schedule award before he passed away. OWCP began development of his schedule award claim in 2018. It properly determined that a conflict in medical opinion existed between Dr. Hartunian, who opined, in his January 18, 2017 report, that appellant had 37 percent permanent impairment of the left lower extremity and 18 percent permanent impairment of the right lower extremity , and Dr. Estaris, the DMA, who opined, in his February 28, 2018 report, that Dr. Hartunian's use of the AAOS inventory to grade the left knee impairment was erroneous and had offered an impairment rating of 34 percent permanent impairment of the left lower extremity and 18 percent permanent impairment of the right lower extremity. OWCP properly referred appellant to Dr. Reardon for an impartial medical examination to resolve the conflict in medical opinion, pursuant to 5 U.S.C. § 8123(a). However, following Dr. Slutsky's DMA review on September 17, 2019, which found Dr. Reardon's IME report lacking in reasoning and which required an addendum, Dr. Reardon declined to provide a further report. As the conflict in medical evidence was unresolved, OWCP properly referred appellant to Dr. Siliski for a new impartial medical examination and opinion. In his June 8, 2021 report, Dr. Siliski opined that the employee had 37 percent permanent impairment of the left lower extremity and 22 percent permanent impairment of the right lower extremity. However, following Dr. Slutsky's DMA review of Dr. Siliski's June 8, 2021, January 31 and April 18, 2022 reports, OWCP requested that Dr. Siliski provide the individual measurements of ROM for both the right and left lower extremities. As Dr. Siliski failed to respond to OWCP's request to provide the individual ROM measurements, OWCP properly scheduled the employee for a new IME examination with Dr. Murray as an unresolved conflict in medical opinion remained.

In a May 25, 2023 report, Dr. Murray, the IME, conducted an administrative records review as the employee had passed away of an unrelated cause on November 22, 2022. While OWCP, by decision dated October 4, 2023, had awarded appellant a schedule award for 31 percent permanent impairment of the left lower extremity (leg) and 26 percent permanent impairment of

[21] 5 U.S.C. § 8109(a).

[22] *Supra* note 10 at Chapter 2.808.7a(7) (February 2013); *see also C.B.*, Docket No. 20-0994 (issued August 9, 2021).

the right lower extremity (leg) based on Dr. Murray's May 25, 2023 report, an OWCP hearing representative, by decision dated October 4, 2023, had vacated the decision as Dr. Murray's report was insufficient to resolve the outstanding conflict in medical opinion. Additionally, a new conflict in medical opinion emerged between Dr. Hartunian, who opined in his August 22, 2023 report, that appellant had 67 percent permanent impairment of the left lower extremity and 32 percent permanent impairment of the right lower extremity and Dr. Slutsky, the DMA, who had opined, in his April 18, 2022 report, that the employee had 31 percent permanent impairment of the left lower extremity and 16 percent permanent impairment of the right lower extremity. Thus, OWCP properly referred appellant to Dr. Kirkpatrick, pursuant to 5 U.S.C. § 8123(a), to resolve the outstanding conflict in medical opinion when Dr. Murray declined to provide the requested addendum report.[23]

In his March 18, 2024 report, Dr. Kirkpatrick concluded that the medical evidence of record did not support an increase in the previously awarded impairment rating of 31 percent permanent impairment of the left lower extremity and 26 percent permanent impairment of the right lower extremity. He thoroughly evaluated the identified conflict in medical opinions and explained the discrepancies with those physician's opinions. Dr. Kirkpatrick explained that he utilized Dr. Hartunian's January 18, 2017 ROM findings as they were the only measurements that met the A.M.A., *Guides* requirement for three measurements with a goniometer and there was no discrepancy regarding appropriate placement by x-ray or instability issues with the total knee replacement. He also indicated that as multiple examiners had mentioned that the employee had a limp with no requirement of a cane, this equated to a GMFH of 1 under Table 16-6. Dr. Kirkpatrick also found that Dr. Hartunian's assignment of GMFH of 3 based on the AAOS lower extremity assessment was at odds with a GMFH of 3 under the A.M.A., *Guides,* was inconsistent with other functional history factors, and the employee's history.

For the left lower extremity, Dr. Kirkpatrick opined that the employee reached MMI on February 19, 2016, which was the one-year mark from the total knee replacement surgery. He noted that the employee's treating physician had found him at MMI with good outcome as of February 19, 2016, all reviewers had agreed, based on their examinations of the employee, that the left knee position was appropriate on x-ray, the employee had no instability as it related to his knee replacement, and there was no additional documentation of x-ray abnormalities or instability noted on any subsequent examinations. Utilizing the DBI rating method, Dr. Kirkpatrick identified the CDX of total knee replacement as a Class 3 impairment pursuant to Table 16-3, which yielded a default value of 37 percent. He applied a GMFH of 1, noted that there were no imaging studies available to assign a GMCS and a GMPE was not applicable. Using the net adjustment formula, Dr. Kirkpatrick properly calculated 31 percent permanent impairment of the left lower extremity, for the employee's total knee replacement. He explained that while Dr. Hartunian, in his August 22, 203 report had provided 67 percent impairment left lower extremity impairment, this was based on Dr. Siliski's inadequate and not appropriately documented ROM findings. The Board notes that while Dr. Kirkpatrick also opined that under the ROM methodology that the employee had 10 percent impairment under Table 16-23 for his total knee replacement, under the

[23] *See supra* note 22; *see also P.L.*, Docket No. 25-0197 (issued February 10, 2025); *L.W.*, Docket No. 22-1207 (issued April 10, 2023); *H.M.*, Docket No. 21-0046 (issued June 1, 2021); *W.C.*, Docket No. 19-1740 (issued June 4, 2020).

A.M.A., *Guides,* there is no alternative methodology to the DBI methodology for a total knee replacement as ROM findings are used as a grade modifier.[24] Therefore Dr. Kirkpatrick's impairment rating based on the ROM rating methodology was improper.

For the right lower extremity, Dr. Kirkpatrick opined that the employee reached MMI on April 25, 2019 as there was no other objective date to support a worsening past that date. Under the ROM rating method, he utilized Dr. Hartunian's January 18, 2017 ROM findings of 0 – 107 degrees, as those findings were the only appropriately documented ROM of record. He found, under Table 16-23, 10 percent permanent impairment. Under the DBI rating method, Dr. Kirkpatrick identified primary knee joint arthritis as the CDX and found that the last measured cartilage interval dated April 25, 2019 was 1 mm which resulted in Class 3 or 30 percent default impairment under Table 16-3. He applied GMFH of 1 and a GMPE of 1. Using the net adjustment formula, Dr. Kirkpatrick properly calculated a grade A or 26 percent permanent impairment of the right lower extremity. The Board finds that Dr. Kirkpatrick properly determined that as the DBI rating method yielded the higher impairment over that of the ROM rating method, the employee had 26 percent permanent impairment of the right lower extremity.[25]

When a case is referred to an IME to resolve a conflict, the resulting medical opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[26] Dr. Kirkpatrick provided a well-reasoned opinion based on a proper factual and medical history. The Board finds that Dr. Kirkpatrick's opinion constitutes the special weight of the medical opinion evidence and is sufficient to establish that appellant is entitled to no greater than 31 percent permanent impairment of the left lower extremity and 26 percent permanent impairment of the right lower extremity for the accepted permanent aggravation of bilateral knee degenerative arthritis.[27]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than 26 percent permanent impairment of the employee's right lower extremity (leg) and 31 percent permanent impairment of the employee's left lower extremity (leg), for which she has previously received schedule award compensation.

[24] A.M.A., *Guides,* Table 16-3, pages 511; 527.

[25] FECA Bulletin No. 17-06 (issued May 8, 2017); *M.R.,* Docket No. 25-0020 (issued March 13, 2025); *V.L.,* Docket No. 18-0760 (issued November 13, 2018).

[26] *G.W.,* Docket No. 24-0844 (issued November 21, 2024); *A.G.,* Docket No. 18-0815 (issued January 24, 2019); *Darlene R. Kennedy*, *supra* note 16; *Gloria J. Godfrey*, *supra* note 17.

[27] *See G.W., id.*; *B.T.*, Docket No. 24-0736 (issued August 23, 2024); *A.P.*, Docket No. 24-0348 (issued June 7, 2024).

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 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