United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 25-0610**
	)	**Issued: July 17, 2025**
DEPARTMENT OF VETERANS AFFAIRS, OKLAHOMA CITY VA MEDICAL CENTER, Oklahoma City, OK, Employer	)	

Appearances:
Appellant, pro se
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 June 9, 2025 appellant filed a timely appeal from a June 6, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 11 percent permanent impairment of his right lower extremity and/or 12 percent permanent impairment of his left lower extremity, for which he previously received schedule award compensation.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances of the case as set forth in the Board's prior decision and prior order are incorporated herein by reference. The relevant facts are as follows.

On November 28, 2016 appellant, then a 47-year-old supervisory police officer, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2016 he injured his lower back and right leg during his annual medical examination and stress test while in the performance of duty. He stopped work on November 4, 2016 and performed light-duty work four hours a day from March 1 through May 26, 2017. On November 30, 2017 OWCP accepted the claim for dislocation of the L4-5 lumbar vertebra. It subsequently expanded the acceptance of the claim to include intervertebral disc disorders with lumbar radiculopathy.[3] OWCP paid appellant wage-loss compensation on the supplemental rolls effective March 1, 2017.

The record reflects that appellant underwent OWCP-authorized L4-5 bilateral hemilaminotomies, medial facetectomies, and foraminotomies with a microdiscectomy on the right, and an L5-S1 unilateral hemilaminotomy, medial facetectomy, and foraminotomy on the right on September 15, 2017 performed by Dr. Benjamin White, a Board-certified neurosurgeon. The operative report noted a preoperative diagnosis of lumbar ruptured disc with lumbar radiculopathy and low back pain. OWCP paid appellant wage-loss compensation for total disability from May 26 through October 15, 2017. Appellant returned to full duty on April 10, 2018. The employing establishment terminated his employment on September 11, 2019.

On September 30, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

Appellant provided a September 25, 2019 impairment evaluation report from Dr. John W. Ellis, a Board-certified family practitioner, who reviewed appellant's medical records and noted that he underwent spine surgery on September 15, 2017. Dr. Ellis applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[4] and *The Guides Newsletter, Rating Spinal Nerve Impairment Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) to his findings and determined that appellant had 21 percent right lower extremity permanent impairment and 18 percent left lower extremity permanent impairment due to his spinal injuries. He also noted that appellant continued to have 12 percent permanent impairment of the left ankle due to fracture of the fibula in accordance with the diagnosis-based impairment (DBI) estimates of the A.M.A.,

[2] *M.S.,* Docket No. 22-0605 (issued September 19, 2024); *Order Remanding Case*, Docket No. 21-0671 (issued December 14, 2021).

[3] OWCP assigned the present claim OWCP File No. xxxxxx297. Under OWCP File No. xxxxxx089, it accepted that appellant sustained a closed fracture of the left ankle during a January 23, 2015 training accident. OWCP granted him a schedule award for 12 percent permanent impairment of the left lower extremity on February 26, 2020.

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

Guides, Table 16-2, page 503. Dr. Ellis combined appellant's left lower extremity impairment ratings and found 28 percent permanent impairment of the left lower extremity. He opined that appellant reached maximum medical improvement (MMI) on that date.

Appellant filed another Form CA-7 schedule award claim on March 5, 2020.

On March 13, 2020 OWCP forwarded the medical record, including Dr. Ellis' report and statement of accepted facts (SOAF), to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA).

In a March 20, 2020 report, Dr. Harris opined that Dr. Ellis' report provided insufficient explanation for his calculation of spinal nerve impairments as there was only limited information regarding the physical findings and functional limitations. He requested a supplemental report from Dr. Ellis.

On June 25, 2020 OWCP again forwarded the medical record and a SOAF to Dr. Harris as the DMA.

In a July 1, 2020 supplemental report, Dr. Harris reiterated that Dr. Ellis' report was insufficient, as there was only limited information regarding appellant's physical findings and functional limitations. He recommended a second opinion evaluation to determine permanent impairment.

In a letter dated July 27, 2020, OWCP referred appellant, the December 12, 2019 SOAF, the medical records, and a series of questions to Dr. Michael S. Brown, a Board-certified physiatrist, for a second opinion permanent impairment evaluation.

Dr. Brown completed a report on September 8, 2020 and related appellant's history of injury and accepted conditions. On physical examination, he found reduced range of motion (ROM) of the lumbar spine, tenderness to palpation over the lumbar paraspinal musculature, and spasm with ROM. Neurological examination revealed weakness of the right anterior tibialis and the right extensor hallucis longus both graded 4/5 and weakness of the right gastric soleus graded 3/5. Appellant demonstrated reduced sensation to light touch in the right L5 and S1 dermatomes, and hypoactive deep tendon reflexes at the knee and ankle. Dr. Brown referred to the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*, finding that appellant had no impairment of the left lower extremity as appellant had no focal myotomal or dermatomal sensory deficits as a result of his diagnosed spinal conditions. However, he found evidence of right L5 and S1 radiculopathies. Dr. Brown utilized Table 2, page 6 of *The Guides Newsletter* for the L5 spinal nerve level. He assigned mild motor and moderate sensory deficits, which were rated as a Class 1 impairment. Dr. Brown assigned a grade modifier for functional history (GMFH) of 1 under Table 16-6, page 516, and a grade modifier for clinical studies (GMCS) of 0 under Table 16-8, page 519, as the electrodiagnostic studies did not show evidence of reduced recruitment and demonstrated normal motor unit action potential. In his application of the grade modifiers for the sensory component, he found that rating moved to grade A position for moderate sensory deficit or a two percent permanent impairment for the L5 sensory component deficit. Dr. Brown's calculation of the grade modifiers for the motor component moved to the position of grade B or three percent permanent impairment for the L5 nerve root. He found

combined L5 motor and sensory deficits of five percent permanent impairment of the right lower extremity. Dr. Brown conducted similar calculations for the S1 spinal nerve level, finding moderate sensory and motor deficits, with application of the grade modifiers resulting in grade A or one percent permanent impairment for the S1 sensory deficit and five percent permanent impairment for the S1 motor deficit, combined to reach six percent right lower extremity impairment based on the S1 nerve root. He then combined appellant's spine nerve root right lower extremity impairments to reach 11 percent permanent impairment of the right lower extremity. Dr. Brown found that appellant had reached MMI.

On November 10, 2020 OWCP referred the medical record, including Dr. Brown's second opinion report, and a SOAF to Dr. Harris, as the DMA. In a November 16, 2020 report, Dr. Harris found that due to impairment of the L5 nerve root appellant had two percent impairment of the right lower extremity due to sensory deficits and three percent impairment of the lower extremity due to mild motor weakness. He found five percent impairment due to mild motor weakness attributed to the S1 nerve root and one percent impairment due to moderate sensory deficit of that nerve root. Dr. Harris found that appellant had 11 percent permanent impairment of his right lower extremity due to his accepted lumbar conditions. He noted that appellant was previously awarded 12 percent left lower extremity impairment due to his accepted left ankle fracture and that there was no increase in his left lower extremity impairment.

By decision dated March 3, 2021, OWCP granted appellant a schedule award for 11 percent permanent impairment of his right lower extremity (leg) and no additional impairment of his left lower extremity (leg). The award ran for 31.68 weeks from September 8, 2020 through April 17, 2021.

Appellant appealed to the Board. By order dated December 14, 2021, the Board set aside the March 3, 2021 decision and remanded the case for OWCP to administratively combine appellant's claims followed by a *de novo* decision.[5]

On February 2, 2022 OWCP updated the SOAF to include the injuries sustained on both January 23, 2015 and November 3, 2016. It then referred the medical record, including Dr. Brown's second opinion report, and an amended SOAF to the DMA, Dr. Harris. In a February 5, 2022 report, he again found that appellant had no more than 11 percent permanent impairment of the right lower extremity.

By decision dated March 10, 2022, OWCP issued a *de novo* decision denying appellant's additional schedule award claim for more than 11 percent permanent impairment of the right lower extremity.

Appellant appealed to the Board. By a September 19, 2024 decision, the Board set aside the March 10, 2022 decision and ordered OWCP to refer the case record, together with the updated SOAF, and a series of questions, to Dr. Brown for a reasoned opinion regarding

[5] *Order Remanding Case,* Docket No. 21-0671 (issued December 14, 2021).

appellant's permanent impairment in accordance with the A.M.A., *Guides* and the issuance of a *de novo* decision.[6]

On November 7, 2024 OWCP referred appellant's claim, along with an October 31, 2024 SOAF, the case record, and a series of questions, to Dr. Christopher Jordan, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding any increased permanent impairment in accordance with the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*. The SOAF provided to Dr. Jordan listed the accepted conditions including dislocation of the L4 and L5 lumbar vertebra, intervertebral disc disorders with radiculopathy, lumbar region, and closed fracture of the left ankle.

In a January 7, 2025 report, Dr. Jordan noted his review of the case record and updated SOAF. He listed appellant's accepted spine and left lower extremity conditions. On examination of appellant's low back, Dr. Jordan found pain in the midback at the L1-2 level. His neurological evaluation of the lower extremities found decreased sensation in a stocking distribution in the right lower leg below the knee and weakness on the right. Dr. Jordan recounted appellant's symptoms of aching in the thighs and buckling and locking of his right knee. Appellant also reported severe left ankle pain. On examination of the left ankle, Dr. Jordan found three measurements each of 30 degrees of ankle dorsiflexion, 50 degrees of plantarflexion, 15 degrees of inversion, and 0 degrees of eversion. He determined that appellant had reached MMI. Dr. Jordan found that appellant had degenerative disc disease and facet arthritis along with central canal and foraminal stenosis rather than dislocation of the L4-5 lumbar vertebra as stated in the SOAF. He applied *The Guides Newsletter* and found a moderate sensory deficit at L5 on the right, a three percent permanent impairment. Dr. Jordan determined that GMFH of 2 based on the pain disability questionnaire. He found a grade modifier for physical examination (GMPE) of 1, and a GMCS of 2. Applying the net adjustment formula, Dr. Jordan reached five percent permanent impairment of the right L5 nerve root. He also found a right S1 nerve root moderate sensory deficit with a default value of two percent. Dr. Jordan listed the determined GMFH as three, GMCS as three, and GMPE of two, raising the impairment rating to three percent permanent impairment. He found a mild sensory deficit of S1 with one percent permanent impairment and no adjustment due to the grade modifiers. Dr. Jordan found eight percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity in accordance with *The Guides Newsletter*. In applying the A.M.A. *Guides* to the lower extremities, he found 10 percent permanent impairment of the right knee due to loss of ROM and no impairments of the left ankle.

On February 10, 2025 OWCP referred the medical record, including Dr. Jordan's second opinion report, and a SOAF, to Dr. Harris, the DMA.

On February 20, 2025 Dr. Harris found no neurologic deficit in the right lower extremity consistent with lumbar radiculopathy and *The Guides Newsletter*. He related that the ROM method was not allowed. Dr. Harris applied the DBI method to appellant's right knee and found seven percent permanent impairment for mild knee strain with mild motion deficits in accordance with Table 16-3, page 509 of the A.M.A., *Guides*. In regard to the left lower

[6] Docket No. 22-0605 (issued September 19, 2024).

extremity, he found no neurologic deficit in the left lower extremity consistent with lumbar radiculopathy and no ratable impairment in accordance with *The Guides Newsletter*. Dr. Harris applied the DBI method to appellant's left knee and found seven percent permanent impairment for mild knee strain with mild motion deficits in accordance with Table 16-3, page 509 of the A.M.A., *Guides.* He concluded that appellant had seven percent permanent impairment of each lower extremity. Dr. Harris determined that the conditions did not meet the criteria to allow for impairment to be calculated by the ROM method.

On October 31, 2024 OWCP requested that Dr. Jordan review Dr. Harris' February 20, 2025 impairment rating and provide comments if he disagreed. On March 31, 2025 Dr. Jordan explained that his physical examination did not demonstrate left S1 sensory neuropathy, but that this condition was found on electrodiagnostic study. He agreed with the DMA that the percentage on the left would be zero.

On April 21, 2025 OWCP referred the medical record, including Dr. Jordan's addendum report, and a SOAF to Dr. Harris, as the DMA. In an April 25, 2025 report, Dr. Harris opined that there was no increase in appellant's right or left lower extremity impairment.

By *de novo* decision dated June 6, 2025, OWCP denied appellant's claim for an increased schedule award.

LEGAL PRECEDENT

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]

Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.[11] However, a schedule award is permissible where the employment-related spinal condition affects the upper

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Id*. at § 10.404 (a); *see also T.T.*, Docket No. 18-1622 (issued May 14, 2019); *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 id.* at Part 3 -- Medical, *Schedule Awards,* Chapter 3.700.2 and Exhibit 1 (January 2010).

[11] 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see M.E.*, Docket No. 21-0281 (issued June 10, 2022); *A.G.*, Docket No. 18-0815 (issued January 24, 2019); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

and/or lower extremities.[12] The sixth edition of the A.M.A., *Guides* (2009) provides a specific methodology for rating spinal nerve extremity impairment in *The Guides Newsletter*. It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. The FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the Federal (FECA) Procedure Manual.[13]

In addressing lower extremity impairment due to peripheral or spinal nerve root involvement, the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* require identifying the class of diagnosis (CDX), which is then adjusted by a GMFH and/or GMCS.[14] The net adjustment formula is (GMFH - CDX) + (GMCS - CDX).[15] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[16]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.[17]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 11 percent permanent impairment of his right lower extremity and/or 12 percent permanent impairment of his left lower extremity, for which he previously received schedule award compensation.

In an impairment evaluation dated January 7, 2025, Dr. Jordan's neurological evaluation of the lower extremities found decreased sensation in a stocking distribution in the right lower leg below the knee and weakness on the right. Dr. Jordan recounted appellant's symptoms of aching in the thighs and buckling and locking of his right knee. Appellant also reported severe left ankle pain. Citing *The Guides Newsletter*, Dr. Jordan found a moderate sensory deficit at L5 on the right, which equaled five percent permanent impairment. He also found a right S1 nerve root moderate sensory deficit, which equaled three percent permanent impairment. Dr. Jordan

[12] *Supra* note 10 at Chapter 2.808.5c(3) (March 2017).

[13] *Supra* note 10 at Chapter 3.700, Exhibit 4 (January 2010); *see L.H.*, Docket No. 20-1550 (issued April 13, 2021); *N.G.*, Docket No. 20-0557 (issued January 5, 2021).

[14] A.M.A., *Guides* 494-531; *The Guides Newsletter*, p.3, (Adjustments are made only for functional history and clinical studies); *see R.V.*, Docket No. 20-0005 (issued December 8, 2020); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[15] *The Guides Newsletter*, *id.*; A.M.A., *Guides* 521.

[16] A.M.A., *Guides* 23-28.

[17] *Supra* note 10 at Chapter 2.808.6(f) (March 2017).

found a mild sensory deficit of S1 with one percent permanent impairment. He found eight percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity in accordance with *The Guides Newsletter*. In applying the A.M.A. *Guides* to the lower extremities, Dr. Jordan found 10 percent permanent impairment of the right knee due to loss of range of motion and no impairments of the left ankle.

On February 20, 2025 Dr. Harris reviewed Dr. Jordan's impairment rating and found that the ROM method was not allowed to evaluate appellant's spinal or lower extremity impairments. He applied the DBI method to appellant's right knee and found seven percent permanent impairment for mild knee strain with mild motion deficits in accordance with Table 16-3, page 509 of the A.M.A., *Guides*. In regard to the left lower extremity, Dr. Harris found no neurologic deficit in the left lower extremity consistent with lumbar radiculopathy and no ratable impairment in accordance with *The Guides Newsletter*. He applied the DBI method to appellant's left knee and found seven percent permanent impairment for mild knee strain with mild motion deficits in accordance with Table 16-3, page 509 of the A.M.A., *Guides*. Dr. Harris concluded that appellant had seven percent permanent impairment of each lower extremity. He reviewed this report and on March 31, 2025 concurred with the impairment rating.

The Board finds that Drs. Jordan and Harris properly calculated appellant's lower extremity impairment in accordance with the standards of the sixth edition of the A.M.A., *Guides*. As there is no current medical evidence of record in conformance with the sixth edition of the A.M.A., *Guides* showing greater than 11 percent permanent impairment of his right lower extremity and 12 percent permanent impairment of his left lower extremity, the Board finds that appellant has not met his 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 his burden of proof to establish greater than 11 percent permanent impairment of his right lower extremity and/or 12 percent permanent impairment of his left lower extremity, for which he previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 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