

² The Board notes that following the May 14, 2025 decision, OWCP received additional evidence. However, 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.*

impairment of the left lower extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

This case was previously before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 7, 1999 appellant, then a 44-year-old letter carrier, filed an occupational disease claim, (Form CA-2) alleging that he developed a right lateral disc herniation at L5-S1 due to factors of his federal employment, including lifting heavy boxes and climbing stairs. OWCP accepted the claim for a herniated lumbar disc.⁴

On May 9, 2000 appellant underwent an OWCP-authorized right L5-S1 lateral discectomy, right L5 hemilaminectomy, and right L5-S1 foraminotomy.

By decision dated November 16, 2006, OWCP granted appellant a schedule award for three percent permanent impairment of the right and left lower extremities. The award ran for 17.28 weeks during the period August 22 through December 20, 2005, and was based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵

By *de novo* decision dated May 29, 2008, OWCP granted appellant an additional schedule award for an additional 12 percent permanent impairment of the right lower extremity. The award ran for 25.92 weeks from February 8 through August 7, 2008 and was based on the fifth edition of the A.M.A., *Guides*.

Appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 13, 2008. By decision dated October 24, 2008, the hearing representative affirmed the May 29, 2008 decision.

Appellant timely appealed the October 24, 2008 decision to the Board. By decision dated November 24, 2009,⁶ the Board set aside the October 24, 2008 decision and remanded the case for additional development of appellant's lower extremity permanent impairment due to both his spine and left hip conditions.

³ Docket No. 22-0727 (issued October 19, 2023); Docket No. 09-834 (issued November 24, 2009).

⁴ OWCP assigned the current claim OWCP File No. xxxxxx425. Appellant also has an accepted claim under OWCP File No. xxxxxx224 for permanent aggravation of osteoarthritis of the left hip. OWCP has administratively combined OWCP File Nos. xxxxxx224 and xxxxxx425, with the latter serving as the master file.

⁵ A.M.A., *Guides* (5th ed 2001).

⁶ *Supra* note 3.

On March 2, 2011 appellant underwent an OWCP-authorized left hip total arthroplasty.⁷

OWCP subsequently expanded the acceptance of appellant's claim to include lumbar disc degeneration, lumbar intervertebral disc disorder with myelopathy, displacement of lumbar disc without myelopathy, and primary osteoarthritis of the left thigh and pelvic region.

On February 3, 2021 OWCP referred appellant, together with a statement of accepted facts (SOAF), medical record, and series of questions, to Dr. Ian B. Fries, a Board-certified orthopedic surgeon, to provide a permanent impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.⁸

In a report dated September 9, 2021, Dr. Fries reviewed the SOAF and the medical history and performed a physical examination. For the left lower extremity, he utilized Table 16-4 on page 515 for the class of diagnosis (CDX) for total hip replacement, which he found was a Class 4 impairment because of moderate-to-severe motion deficits. Dr. Fries assigned a grade modifier for functional history (GMFH) of 2 based on an asymmetric stance, a grade modifier for physical examination (GMPE) of 2 based on palpatory and observed abnormalities, and a grade modifier for clinical studies (GMCS) of 2 based upon the need for a total hip replacement. He applied the net adjustment formula, page 512 of the A.M.A., *Guides* resulting in 59 percent impairment of the left lower extremity. For the left lower extremity/lumbar spine, under the diagnosis-based impairment (DBI) methodology of *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), he found sensory deficits due to left L5-S1 disc herniation, which corresponded with CDX of 1, resulting in three percent permanent impairment of the left lower extremity. Dr. Fries concluded that appellant had combined 60 percent permanent impairment of the left lower extremity. With regard to appellant's right lower extremity, he found three percent right lower extremity impairment due to similar sensory deficits as a result of L5 disc herniation. Dr. Fries noted that appellant had previously received schedule award compensation.

By decision dated December 3, 2021, OWCP granted appellant a schedule award for an additional 57 percent permanent impairment of the left lower extremity. The award ran from January 3, 2020 through February 25, 2023 and was based on the sixth edition of the A.M.A., *Guides*.

Appellant timely appealed that decision to the Board.

By decision dated October 19, 2023,⁹ the Board set aside the December 3, 2021 OWCP decision and remanded the case to a district medical adviser (DMA) to determine the nature and extent of appellant's bilateral lower extremity permanent impairment for his accepted March 11, 1999 and August 14, 2008 employment injuries.

⁷ On June 29, 2012 OWCP authorized lumbar fusion surgery at L5-S1.

⁸ A.M.A., *Guides* (6th ed. 2009).

⁹ Docket No. 22-0727 (issued October 19, 2023).

On December 12, 2023 Dr. Michael Katz, a Board-certified orthopedic surgeon serving as an OWCP DMA, reviewed Dr. Fries' September 9, 2021 report. He found that, under the A.M.A., *Guides* and *The Guides Newsletter*, appellant had 59 percent permanent impairment of the left lower extremity due to a total hip replacement with poor result, moderate-to-severe motion deficit. Dr. Katz further found moderate sensory deficit of the sciatic nerve, 3 percent permanent impairment and combined these ratings to reach 60 percent permanent impairment of the left lower extremity. He also noted that appellant had moderate sensory deficit of the right sciatic nerve resulting in three percent permanent impairment of the right lower extremity. Dr. Katz concluded that since the current impairment rating did not exceed the prior, overlapping awards of 60 percent permanent impairment of the left lower extremity and 3 percent permanent impairment of the right lower extremity, there was no additional award due for permanent impairment of appellant's lower extremities.

By decision dated January 11, 2024, OWCP denied appellant's request for an increased schedule award, finding that appellant had 60 percent permanent impairment of the left lower extremity and 3 percent permanent impairment of the right lower extremity.

On January 24, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on April 18, 2024.

By decision dated July 2, 2024, OWCP's hearing representative affirmed the January 11, 2024 OWCP decision.

On July 17, 2024 OWCP authorized surgical lumbar spine fusion.

On December 23, 2024 appellant requested reconsideration of the July 2, 2024 decision.

On October 5, 2021 OWCP referred appellant to Dr. Gary Pushkin, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the extent of the permanent impairment of appellant's lower extremities. In a report dated February 6, 2025, Dr. Pushkin noted his medical course and physical examination findings. He indicated that he had rated appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*. Dr. Pushkin noted that appellant had 59 percent permanent impairment of the left lower extremity due to a total hip replacement with poor result, moderate-to-severe motion deficit, Table 16-4, page 515 of the A.M.A., *Guides*. He determined that appellant had bilateral lower extremity sensory deficits consistent with his accepted disc herniation. Dr. Pushkin found sensory impairment of lateral sural cutaneous nerve and saphenous nerve on the right and impairments of the sural nerves, superficial peroneal nerve, medial and lateral plantar nerves in both feet secondary to appellant's diabetes. He found that these impairments resulted in 13 percent permanent impairment to each lower extremity resulting in 64 percent permanent impairment of the left lower extremity and 13 percent permanent impairment of the right lower extremity.

On March 6, 2025 Dr. Katz, OWCP's DMA, reviewed Dr. Pushkin's February 6, 2025 report and found that he had improperly evaluated appellant's lower extremity impairment due to peripheral or spinal nerve root involvement without utilizing *The Guides Newsletter*. He recommended an additional second opinion schedule award evaluation.

In an April 22, 2025 supplemental report, Dr. Pushkin repeated his finding of 59 percent permanent impairment of the left lower extremity due to left total hip arthroplasty. He further applied appropriate tables in *The Guides Newsletter* to the L5 level and assigned a Class 1 mild sensory deficit on the right of one percent. Dr. Pushkin determined that appellant had a severe sensory deficit with a default grade of C for 6 percent permanent impairment on the left resulting in a combined 61 percent permanent impairment of the left lower extremity.

On May 3, 2025 Dr. Katz, OWCP's DMA, reviewed Dr. Pushkin's April 22, 2025 report and concurred with his initial findings of 59 percent left lower extremity permanent impairment due to total hip replacement and 6 percent left lower extremity permanent impairment due to L5 severe sensory impairment and that these ratings combined to reach 61 percent permanent impairment of the left lower extremity. In regard to the right lower extremity, Dr. Katz also agreed that appellant had one percent impairment due to L5 mild sensory deficit. He related that he had previously received 60 percent permanent impairment of the left lower extremity, such that appellant was entitled to an additional schedule award for 1 percent permanent impairment. Dr. Katz further determined that he was not entitled to an additional schedule award for permanent impairment of the right lower extremity.

By decision dated May 13, 2025, OWCP modified the July 2, 2024 decision. It found that the medical evidence of record established 61 percent permanent impairment of the left lower extremity. OWCP further determined that the July 2, 2024 decision was affirmed in part as the medical evidence of record did not establish greater than 13 percent permanent impairment of appellant's right lower extremity.

By decision dated May 14, 2025, OWCP granted appellant a schedule award for an additional one percent permanent impairment of his left lower extremity, for a total 61 percent permanent impairment. The award ran for 2.88 weeks for the period February 10 through March 2, 2025. Further, OWCP found appellant had no greater than the 12 percent permanent impairment of the right lower extremity, for which he previously received a schedule award.

LEGAL PRECEDENT

The schedule award provisions of FECA¹⁰ and its implementing regulations¹¹ 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.¹² For schedule awards after

¹⁰ *Supra* note 1.

¹¹ 20 C.F.R. § 10.404.

¹² *Id.*; see also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.¹³

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.¹⁴ 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 maximum medical improvement), 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*.¹⁵

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*.¹⁶ 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.¹⁷ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁸ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹⁹

Neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole.²⁰ Furthermore, the back is specifically excluded from the definition of organ under FECA.²¹ The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides*

¹³ 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).

¹⁴ *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁵ *Supra* note 13 at Chapter 2.808.5 (March 2017).

¹⁶ A.M.A., *Guides*, page 3, section 1.3.

¹⁷ *Id.* at 493-556.

¹⁸ *Id.* at 521.

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

²⁰ *G.W.*, Docket No. 23-0600 (issued September 20, 2023); *K.Y.*, Docket No. 18-0730 (issued August 21, 2019); *L.L.*, Docket No. 19-0214 (issued May 23, 2019); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

²¹ *See* 5 U.S.C. § 8101(19); *see also T.M.*, Docket No. 23-0211 (issued August 10, 2023); *G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

Newsletter is to be applied.²² The Board has recognized the adoption of this methodology for rating extremity impairment, including the use of *The Guides Newsletter*, as proper in order to provide a uniform standard applicable to each claimant for a schedule award for extremity impairment originating in the spine.²³

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.²⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 12 percent permanent impairment of the right lower extremity or 61 percent permanent impairment of the left lower extremity, for which he previously received schedule award compensation.

In an impairment evaluation dated April 22, 2025, Dr. Pushkin found through application of the DBI methodology of the A.M.A., *Guides* that appellant had 59 percent permanent impairment of the left lower extremity due to his poor result following total hip replacement. He further cited *The Guides Newsletter* and found a mild sensory deficit at L5 on the right, which equaled one percent permanent impairment. Dr. Pushkin also found a severe left L5 nerve root sensory deficit, which equaled six percent permanent impairment. In applying the A.M.A. *Guides* and *The Guides Newsletter* to the lower extremities, Dr. Pushkin found 61 percent permanent impairment of the left lower extremity and 1 percent permanent impairment of the right lower extremity.

On May 3, 2025 Dr. Katz reviewed Dr. Pushkin's impairment rating and concurred with his impairment rating and methodology. Dr. Katz concluded that appellant had 61 percent permanent impairment of the left lower extremity and 1 percent permanent impairment of the right lower extremity.

The Board finds that Drs. Pushkin and Katz 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 61 percent permanent impairment of his left lower extremity and 12 percent permanent impairment of his right 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.

²² *Supra* note 13 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

²³ *C.J.*, Docket No. 21-1389 (issued July 24, 2023); *E.D.*, Docket No. 13-2024 (issued April 24, 2014); *D.S.*, Docket No. 13-2011 (issued February 18, 2014).

²⁴ *Supra* note 13 at Chapter 2.808.6(f) (March 2017).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 12 percent permanent impairment of the right lower extremity or 61 percent permanent impairment of the left lower extremity, for which he previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the May 13 and 14, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 20, 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