



schedule award; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review

### **FACTUAL HISTORY**

On March 16, 2018 appellant, then a 56-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 23, 2018 he suffered a meniscus tear of the right knee, deformity of the medial meniscus posterior, a tear of the front kneecap, and severe arthritis when he twisted his ankle and fell on his knee after stepping on a crack in the sidewalk while in the performance of duty. He stopped work on January 25, 2018 and returned on February 5, 2018.

On May 4, 2018 OWCP accepted appellant's claim for unilateral primary osteoarthritis of the right knee, tear of the medial meniscus of the right knee, and right knee effusion.

In a July 20, 2018 report, Dr. Jay Brooker, a Board-certified orthopedic surgeon, noted that appellant experienced pain and swelling in his right knee. He found that appellant's range of motion (ROM) of the right knee was 115 degrees.

Appellant underwent OWCP-authorized right knee arthroscopic surgery with partial medial meniscectomy and chondroplasty of the lateral femoral condyle on January 9, 2019.

In a March 21, 2019 report, Dr. Brooker noted that appellant was improving after his right knee surgery and physical therapy treatment. He examined appellant and found that he had free ROM of the right knee.

On March 26, 2019 appellant filed a claim for a schedule award (Form CA-7).

In support of his claim, appellant submitted a May 8, 2019 report from Dr. Robert Strugala, a Board-certified specialist in sports medicine, who reviewed appellant's medical history, provided physical examination findings, and diagnosed medial meniscus tear treated arthroscopically with partial medial meniscectomy. He provided an impairment rating based on the diagnosis-based impairment (DBI) method of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> Under Table 16-3, Knee Regional Grid, page 509 of the A.M.A., *Guides*, Dr. Strugala identified the class of diagnosis (CDX) as a class 1 impairment for the diagnosis of meniscal injury, partial medial or lateral meniscectomy. He assigned a grade modifier for functional history (GMFH) of zero in accordance with Table 16-6, page 516, as appellant had no gait derangement or use of assistive devices. Dr. Strugala further found a grade modifier for physical examination (GMPE) of zero as appellant had good alignment, normal ROM, good strength, and no atrophy. He reported a grade modifier for clinical studies (GMCS) of two in accordance with Table 16-8, page 519, as the clinical studies confirmed the diagnoses and pathology, including osteochondral injury and chondrosis. Dr. Strugala calculated that appellant had a net adjustment of -1, resulting in movement from the default value of C to B and corresponding to two percent lower extremity impairment rating.

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

On May 23, 2019 OWCP referred appellant's case, along with a statement of accepted facts (SOAF), for a schedule award impairment evaluation to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as the district medical adviser (DMA). In a June 3, 2019 report, Dr. Fellars reviewed the medical record and SOAF. He disagreed with Dr. Strugala's impairment rating of two percent as appellant had right knee osteoarthritis, which would provide a higher-rated impairment rating than his meniscal injury when used as the basis for the rating. Utilizing the DBI method of the A.M.A., *Guides*, Dr. Fellars identified the CDX as a class 1 impairment for the diagnosis of right knee osteoarthritis under Table 16-3, page 511. He assigned a GMFH of zero in accordance with Table 16-6, page 516, as appellant had no gait derangement. Dr. Fellars found a GMPE of zero in accordance with Table 16-7, page 517, as appellant had a normal examination. He reported a GMCS of two as there was moderate pathology identified. Dr. Fellars calculated that appellant had a net adjustment of -1, resulting in movement from the default value of C to B and corresponding to six percent lower extremity impairment rating. He found that appellant's diagnosed condition did not meet the criteria to allow impairment to be calculated by the ROM methodology and concluded that appellant reached maximum medical improvement (MMI) on May 8, 2019.

By decision dated November 26, 2019, OWCP granted appellant a schedule award for six percent permanent impairment of the right lower extremity.

On December 11, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an accompanying statement, he noted that he still experienced right knee swelling and could not kneel or bend down. Appellant asserted that Dr. Strugala did not know enough about his medical history to provide an accurate impairment rating. He argued that 20 percent permanent impairment rating for his right lower extremity was more accurate.

In a March 11, 2020 notice, OWCP's hearing representative informed appellant that his oral hearing was scheduled for April 17, 2020 at 11:40 a.m. Eastern Standard Time (EST). She instructed appellant to "call the toll free number listed below" and when prompted "enter the pass code." The hearing representative mailed the notice to appellant's last known address of record. Appellant did not call in and no request for postponement of the hearing was made.

Appellant continued to submit medical evidence. In an April 2, 2020 report, Dr. Brooker examined appellant and diagnosed left knee degenerative meniscus tear that was exacerbated by a work-related injury. He noted that appellant's right knee impairment had to be at least 25 percent due to the progression of his arthritis.

By decision dated April 28, 2020, OWCP determined that appellant had failed to appear at the oral hearing and, therefore, abandoned his request. It indicated that he had received written notice 30 days in advance of the hearing scheduled for April 17, 2020, and that he failed to appear for the oral hearing. OWCP further noted that there was no indication in the record that appellant had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain his failure to appear.

## LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA,<sup>4</sup> and its implementing federal regulations,<sup>5</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 loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>6</sup> The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.<sup>7</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning Disability and Health (ICF).<sup>8</sup> Under the sixth edition, the evaluator identifies the CDX, which is then adjusted by the GMFH, GMPE, and GMCS.<sup>9</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>10</sup> Evaluators are directed to provide reasons for their impairment rating, including the choice of diagnoses from regional grids and the calculation of the modifier score.<sup>11</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>12</sup>

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6<sup>th</sup> ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Chapter 3.700, Exhibit 1 (January 2010).

<sup>7</sup> *See C.N.*, Docket No. 20-0543 (issued November 30, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>8</sup> A.M.A., *Guides*, page 3, section 1.3, The International Classification of Functioning, Disability, and Health (ICF): A Contemporary Model of Disablement.

<sup>9</sup> *Id.* at 493-556.

<sup>10</sup> *Id.* at 521.

<sup>11</sup> *E.W.*, Docket No. 19-1720 (issued November 25, 2020); *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>12</sup> *See supra* note 6 at Chapter 2.808.6(f) (March 2017).

## **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish greater than six percent permanent impairment of his right lower extremity for which he previously received a schedule award.

In a May 8, 2019 report, Dr. Strugala provided physical examination findings and provided a rating of permanent impairment based upon the sixth edition of the A.M.A., *Guides*. He indicated that appellant had a CDX of 1 for the diagnosis of partial medial or lateral meniscectomy. Dr. Strugala applied the net adjustment formula and calculated two percent lower extremity impairment rating based upon the DBI methodology.

Consistent with its procedures, OWCP properly referred the matter to a DMA for an opinion regarding appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.<sup>13</sup>

In a June 3, 2019 report, Dr. Fellars, serving as the DMA, reviewed the medical record, including the clinical findings of Dr. Strugala. He disagreed with Dr. Strugala's impairment rating of two percent as appellant had right knee osteoarthritis, which would provide a higher-rated impairment rating than his meniscal injury when used as the basis for the rating. Dr. Fellars indicated that appellant had a CDX of 1 for the diagnosis of right knee osteoarthritis. He applied the net adjustment formula and calculated six percent lower extremity impairment rating based upon the DBI methodology. Dr. Fellars properly explained that appellant's right knee diagnoses did not allow for a ROM rating under the A.M.A., *Guides*.

The Board finds that the DMA applied the appropriate tables and grading schemes of the A.M.A., *Guides* to Dr. Strugala's clinical findings and properly calculated six percent permanent impairment of appellant's left lower extremity. As there is no medical evidence of record in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has greater than the six percent permanent impairment of his right lower extremity previously awarded, the Board finds that appellant has not met his burden of proof to establish that he is entitled to additional schedule award compensation.<sup>14</sup>

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 impairment.

## **LEGAL PRECEDENT -- ISSUE 2**

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>15</sup> Unless otherwise directed in writing by the claimant, OWCP's hearing

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<sup>13</sup> See *E.W.*, *supra* note 11.

<sup>14</sup> See *J.S.*, Docket No. 20-0739 (issued November 13, 2020).

<sup>15</sup> 20 C.F.R. § 10.616(a).

representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.<sup>16</sup> OWCP has the burden of proof to establish that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.<sup>17</sup>

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before an OWCP hearing representative.

The record establishes that appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review following its November 26, 2019 decision. In a March 11, 2020 letter, a hearing representative notified appellant that the Branch of Hearings and Review had scheduled a telephonic hearing to be held on April 17, 2020 at 11:40 a.m., EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record and provided instructions on how to participate. However, appellant failed to call in for the scheduled hearing and did not request a postponement or provide an explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing.<sup>19</sup> The Board, therefore, finds that OWCP properly determined that appellant abandoned his request for an oral hearing.<sup>20</sup>

On appeal appellant contends that he did not abandon his request for a telephonic hearing. He asserted that OWCP informed him that it would call him on April 17, 2020 at 10:00 a.m., EST. Appellant provided no evidence to support this assertion. The record establishes that OWCP mailed the hearing notice, with instructions on how to participate; however, he failed to appear.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish greater than six percent permanent impairment of his right lower extremity, for which he previously received a

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<sup>16</sup> *Id.* at § 10.617(b).

<sup>17</sup> *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>18</sup> 20 C.F.R. § 10.622(f); FECA Procedure Manual *supra* note 6 at Chapter 2.1601.6(g) (October 2011); *J.H.*, Docket No. 20-0023 (issued September 16, 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>19</sup> *See M.M.*, Docket No. 19-0665 (issued September 15, 2020).

<sup>20</sup> *Supra* note 18.

schedule award. The Board further finds that OWCP properly determined that appellant abandoned his request for an oral hearing before an OWCP hearing representative.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 26, 2019 and April 28, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 8, 2021  
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