United States Department of Labor
Employees' Compensation Appeals Board

P.R., Appellant	)	
and	)	**Docket No. 20-1199**
	)	**Issued: February 8, 2021**
U.S. POSTAL SERVICE, MATTESON POST OFFICE, Matteson, IL, Employer	)	

Appearances:
Appellant, pro se
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 May 12, 2020 appellant filed a timely appeal from a May 7, 2020 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 over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the May 7, 2020 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 10 percent permanent impairment of the right lower extremity, for which he previously received a schedule award.

FACTUAL HISTORY

On June 13, 2018 appellant, then a 39-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that day he sustained a right knee sprain when he stepped into an unseen hole while in the performance of duty. He initially stopped work on June 13, 2018.

On July 11, 2018 OWCP accepted appellant's claim for right knee sprain and right ankle sprain. On April 12, 2019 it expanded acceptance of the claim to include right knee anterior cruciate ligament (ACL) tear. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning August 18, 2018.

Appellant underwent OWCP-authorized right knee arthroscopic surgery with ACL reconstruction and partial medial meniscectomy on February 19, 2019.

In a March 8, 2019 report, Thomas Prokop, a physician assistant, noted that appellant's range of motion (ROM) was improving following his ACL reconstruction. He examined appellant and found that his ROM of the right knee revealed 0 to105 degrees of flexion.

In a report dated April 5, 2019, Dr. George Branovacki, a Board-certified orthopedic surgeon, noted that appellant was experiencing pain in his right hamstring area. He examined appellant and found that his right knee showed no deformity, erythema, swelling, or instability. Appellant's ROM of his right knee revealed 0 to 110 degrees of flexion.

On May 17, 2019 Dr. Branovacki noted that appellant experienced no changes in his right knee symptoms. He examined appellant and found no changes in his right knee.

In a June 21, 2019 report, Mr. Prokop noted that appellant experienced some swelling in his right knee. He examined appellant and found no swelling, ecchymosis, deformity, tenderness, or palpation in his right knee. Mr. Prokop indicated that appellant had full ROM in his right knee.

In a report dated August 9, 2019, Dr. Branovacki noted that appellant reported increased pain and effusion in his right knee. He examined appellant and found moderate effusion of his right knee. Appellant's ROM of his right knee revealed 0 to 120 degrees of flexion.

Appellant resigned from the employing establishment, effective August 21, 2019.

On August 26, 2019 appellant filed a claim for a schedule award (Form CA-7), and submitted a magnetic resonance imaging (MRI) scan report of his right knee of even date, which revealed mucinous degeneration of the ACL graft, abnormal signal within the posterior horn of the medial meniscus, mild degenerative changes with chondromalacia, joint effusion, and soft tissue edema.

In a September 6, 2019 report, Dr. Branovacki noted that appellant was improving since his last visit. He examined appellant and found no swelling, ecchymosis, deformity, crepitus, effusion, or tenderness in his right knee. Dr. Branovacki indicated that appellant had full ROM in his right knee. He diagnosed right knee pain.

On September 25, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record to Dr. Steven Chandler, an osteopath specializing in orthopedic surgery, for a second-opinion examination to determine whether appellant suffered residuals from his accepted conditions.

In a report dated November 7, 2019, Dr. Branovacki noted that appellant experienced only mild pain in his right knee. He examined appellant and found no changes in his right knee. Dr. Branovacki diagnosed right knee pain.

In a February 5, 2020 report, Dr. Chandler indicated that he had reviewed the SOAF and related appellant's medical history. He examined appellant and diagnosed peripheral tear of the medial meniscus of the right knee, ACL sprain of the right knee, right ankle sprain, and right knee sprain. Dr. Chandler opined that appellant's conditions were causally related to his employment injury. He indicated that appellant's right knee and ankle sprains had resolved and that his meniscus and ACL tears had improved following right knee surgery. Dr. Chandler noted that appellant had reached maximum medical improvement (MMI) and that he had some permanent impairment in his right knee due to laxity, pain, and weakness. He opined that appellant could not experience full recovery in his right knee and found that he could not return to full-duty work as a city carrier assistant. Dr. Chandler noted that with the type of injury he suffered, that he would never get 100 percent full recovery of the knee. In an accompanying work capacity evaluation (Form OWCP-5c), he listed appellant's work restrictions.

On February 19, 2020 OWCP expanded acceptance of appellant's claim to include peripheral tear of the medial meniscus of the right knee.

On February 19, 2020 OWCP referred the case to Dr. Roy Bardwell, a Board-certified osteopath specializing in osteopathic manipulative treatment, for a second-opinion examination to determine the percentage of permanent functional loss of the right lower extremity and the date of MMI for schedule award purposes.

In an April 9, 2020 report, Dr. Bardwell noted that appellant had reached MMI. He examined appellant and diagnosed right medial meniscus tear, ACL tear, and right ankle sprain. Dr. Bardwell noted that appellant had chronic pain and swelling in the right knee and had tenderness with palpation over the medial meniscus. He indicated that appellant had crepitus in the right knee and passive ROM. Dr. Bardwell provided an impairment rating based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] He determined that based on his diagnoses, appellant had a grade 3 whole body impairment with 25 percent lower right extremity impairment.

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

On April 10, 2020 OWCP referred appellant's medical records, along with the SOAF, for a schedule award impairment evaluation with Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as the district medical adviser (DMA). In an April 15, 2020 report, Dr. Katz reviewed the medical record and SOAF. Utilizing the diagnosis-based impairment (DBI) method of the A.M.A., *Guides*, he identified the class of diagnosis (CDX) as a class 1 impairment for the diagnosis of cruciate or collateral ligament injury with mild laxity under Table 16-3, page 510. Dr. Katz assigned a grade modifier for functional history (GMFH) of 1, a grade modifier for clinical studies (GMCS) of 1, and cited to Table 16-6 and Table 16-8. He found that a grade modifier for physical examination (GMPE) was not applicable and calculated that appellant had a net adjustment of zero, resulting in no movement from the default value of C. Dr. Katz found 10 percent lower extremity impairment. He found that appellant's diagnosed conditions did not meet the criteria to allow impairment to be calculated by the ROM methodology and concluded that appellant reached MMI on February 3, 2020. Dr. Katz disagreed with Dr. Bardwell's impairment rating of 25 percent as he did not provide any worksheets, narrative, or calculations to explain how he reached his determination.

By decision dated May 7, 2020, OWCP granted appellant a schedule award for 10 percent permanent impairment of his right lower extremity based on the DMA's report, to which it afforded the weight of the medical evidence.

LEGAL PRECEDENT

The schedule award provisions of FECA,[4] and its implementing federal regulations,[5] 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. However, FECA, 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*.[6] 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.[7]

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

[4] *Supra* note 1.

[5] 20 C.F.R. § 10.404.

[6] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th 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).

[7] *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).

(ICF).[8] Under the sixth edition, the evaluator identifies the CDX, which is then adjusted by the GMFH, GMPE, and GMCS.[9] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[10] 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.[11]

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.[12]

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted appellant's claim for right knee sprain, right ankle sprain, right knee ACL tear, and peripheral tear of the medial meniscus of the right knee.

In an April 9, 2020 report, Dr. Bardwell examined appellant and diagnosed right medial meniscus tear, ACL tear, and right ankle sprain. He determined that under the sixth edition of the A.M.A., *Guides*, appellant had a grade 3 whole body impairment with 25 percent lower extremity impairment, but did not explain the basis of his determination. Consistent with its procedures,[13] 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*.[14]

In an April 15, 2020 report, Dr. Katz, serving as the DMA, determined that appellant had 10 percent lower extremity impairment. Utilizing the DBI method of the sixth edition of the A.M.A., *Guides*, he identified the CDX as a class 1 impairment for the diagnosis of cruciate or collateral ligament injury with mild laxity under Table 16-3, page 510. Dr. Katz assigned a GMFH and GMCS with reference to Table 16-6 and Table 16-8. He calculated a net adjustment of zero and found that appellant's diagnosed conditions did not meet the criteria to allow impairment to be calculated by the ROM methodology. Dr. Katz disagreed with Dr. Bardwell's impairment rating of 25 percent as he did not provide any explanation or calculations to explain how he reached his rating.

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

[9] *Id.* at 493-556.

[10] *Id.* at 521.

[11] *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).

[12] *See supra* note 6 at Chapter 2.808.6(f) (March 2017).

[13] *Id.*

[14] *See E.W.*, *supra* note 11.

The Board finds that Dr. Katz disagreed with Dr. Bardwell's impairment rating of 25 percent as he did not provide any explanation to support his rating. However, the Board finds that Dr. Katz also failed to adequately explain his opinion in accordance with the relevant standards. Although he identified the CDX, Dr. Katz did not sufficiently explain how he classified appellant's cruciate or collateral ligament injury based on severity.[15] Further, as noted, GMFH, GMPE, and GMCS should be considered.[16] Dr. Katz did not provide a GMPE. While he cited to Table 16-6 and Table 16-8, he did not explain the application of GMFH and GMCS.[17] The Board also finds that, while Dr. Katz evaluated appellant's permanent impairment rating utilizing the DBI methodology, he did not sufficiently explain why the ROM methodology should not have been used as a basis for the rating.[18] Consequently, the Board finds that Dr. Katz's report requires clarification.

It is well established that proceedings under FECA are not adversarial in nature, and while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[19] Once OWCP undertook development of the evidence by referring appellant's case file to an OWCP medical adviser, it had an obligation to do a complete job and obtain a proper evaluation and report that would resolve the issue in this case.[20] The case is therefore remanded to OWCP for referral of the case record and a SOAF to the DMA for a proper analysis under the A.M.A., *Guides* in order to determine if appellant has greater than 10 percent permanent impairment of his right lower extremity. After this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's schedule award claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

[15] *See D.O.*, Docket No. 19-1729 (issued November 3, 2020); *R.O.*, Docket No. 10-2143 (issued August 15, 2011).

[16] *Supra* note 9.

[17] *See D.O.*, *supra* note 15.

[18] *See M.A.*, Docket No. 19-1732 (issued September 9, 2020).

[19] *See W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[20] *See G.M.*, Docket No. 19-1931 (issued May 28, 2020); *Peter C. Belkind*, 56 ECAB 580 (2005); *Ayanle A. Hashi*, 56 ECAB 234 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 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