United States Department of Labor
Employees' Compensation Appeals Board

M.J.,	)	
	)	
and	)	**Docket No. 20-1264**
	)	**Issued: February 16, 2021**
DEPARTMENT OF VETERANS AFFAIRS,	)	
ALEDA E. LUTZ VA MEDICAL CENTER,	)	
Saginaw, MI, Employer	)	
	)	

Appearances:
Alan J. Shapiro, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 10, 2020 appellant, through counsel, filed a timely appeal from an April 29, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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] 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On December 19, 2002 appellant, then a 44-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 18, 2002 he injured his right kneecap when he slipped on ice while in the performance of duty. By decision dated January 21, 2003, OWCP accepted the claim for right knee sprain.[3] Appellant returned to full-time modified-duty work on February 11, 2003 and full-time regular-duty work on March 5, 2003.[4]

OWCP thereafter received an October 3, 2017 medical report by Dr. Catherine Watkins Campbell, Board-certified in occupational medicine. Dr. Watkins Campbell noted a history of the accepted December 18, 2002 employment injury.[5] On physical examination appellant presented wearing braces bilaterally and ambulated with a mild-to-moderately antalgic gait. On general examination she found limited ability to squat, negative Trendelenburg sign bilaterally, and no laxity in the right knee. Dr. Watkins Campbell reported medial joint line tenderness of the right knee, mild patellar crepitance of the right knee, negative popliteal examination on the right, and normal strength. On range of motion (ROM) examination of the right knee, she reported three measurements of appellant's right knee consisting of 120, 120, and 125 degrees of flexion, and -14, -10, and -9 degrees of extension. She reported that appellant was at maximum medical improvement (MMI) on August 10, 2017, the date of the examination.

Dr. Watkins Campbell referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[6] and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid), page 509, the class of diagnosis (CDX) for a knee strain resulted in a class 1 impairment for "mild motion deficits" with a default value of seven. Dr. Watkins Campbell assigned a grade modifier for functional history (GMFH) of 1, at page 516, based on appellant's gait derangement consistent with "antalgic limp with asymmetric shortened stance, corrects with footwear modifications and/or orthotics." She assigned a grade modifier for physical examination (GMPE) of 1, at page 517, based on minimal palpatory findings, consistently documented, without observed abnormalities. She further noted a GMPE of 1 as appellant's range of motion revealed "mild or arthrodesis in position of function." Dr. Watkins Campbell found that a grade modifier for clinical studies

[3] Appellant was paid continuation of pay from December 19, 2002 through February 1, 2003.

[4] On December 11, 2009 OWCP indicated that there was no activity in the claim since 2003 and it was placed in a case-closed status. Appellant retired effective November 30, 2015.

[5] Dr. Campbell referenced a 2014 work injury in which appellant tripped and fell while assisting a patient and reinjured his right knee and lower back. She noted having no documentation of the 2002 injury. She rated the right knee based on the assumption that a recognized injury occurred in 2002 and again in 2014.

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

(GMCS) was not applicable as the clinical studies were used to establish the diagnosis and proper placement in the regional grid. She utilized the net adjustment formula (GMFH - CDX) + (GMPE - CDX) = (1 - 1) + (1 - 1) = 0, which resulted in a grade C or seven percent permanent impairment of the right lower extremity. Dr. Watkins Campbell did not provide a ROM impairment rating pursuant to Table 16-23 (Knee Motion Impairments), page 549. She concluded that appellant had seven percent permanent impairment of the right lower extremity under the DBI rating method.

On June 7, 2019 OWCP routed Dr. Watkins Campbell's October 3, 2017 report, a statement of accepted facts (SOAF), and the case file to Dr. Herbert White, Jr., a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for review and a determination of permanent impairment of the right lower extremity in accordance with the sixth edition of the A.M.A., *Guides* and the date of maximum medical improvement (MMI).

In a June 12, 2019 report, Dr. White reviewed the medical record, including the report of Dr. Watkins Campbell. He found that the diagnosis of right knee sprain had been established. Using the DBI method with reference to appellant's right knee condition, the DMA found that, under the sixth edition of the A.M.A., *Guides*, Table 16-3, page 509, the CDX for a knee strain resulted in a class 1 impairment for "palpatory findings" with a default value of two. Dr. White assigned a GMFH of 1 based on appellant's abnormal gait. He assigned a GMPE of 1 based on tenderness. Dr. White found that a GMCS was not applicable as the clinical studies were used to establish the diagnosis and proper placement in the regional grid. He utilized the net adjustment formula (GMFH - CDX) + (GMPE - CDX) = (1 - 1) + (1 - 1) = 0, which resulted in a grade C or two percent permanent impairment of the right lower extremity. Dr. White referenced Dr. Watkins Campbell's right knee ROM measurements for flexion 120, 120 and 125 degrees and for flexion contracture -14, -10, and -9 degrees and opined that pursuant to Table 16-23, Knee Motion Impairments, page 549, these ROM findings were normal. Dr. White addressed the discrepancy between his rating of two percent impairment and Dr. Watkins Campbell's rating of seven percent impairment of the right lower extremity and explained that Dr. Watkins Campbell noted that appellant had decreased ROM of the right knee; however, upon application of her findings to Table 16-23, ROM was found to be normal. He concurred that the date of MMI was August 10, 2017.

By decision dated November 19, 2019, OWCP granted appellant a schedule award for two percent permanent impairment of the right lower extremity. The period of the award ran for 5.76 weeks for the period August 10 to September 19, 2017, and was based on the opinion of the DMA.

On November 26, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review and submitted a supplemental report from Dr. Watkins Campbell in which she addressed the discrepancy between her impairment findings and Dr. White's. Referencing the A.M.A., *Guides*, Dr. Watkins Campbell asserted that Dr. White erroneously applied the use of the stand-alone ROM method, which was permissible for some diagnoses primarily in the upper extremity ratings. She indicated that there was no asterisk by the knee strain diagnosis allowing for use of the ROM method. Dr. Watkins Campbell noted that the examiner was to use the greater of the two values using the DBI method and ROM method. She reiterated her prior opinion that appellant sustained seven percent impairment of the right lower extremity.

An oral hearing was held on March 11, 2020. By decision dated April 29, 2020 OWCP's hearing representative affirmed the November 19, 2019 decision.

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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[9] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[10] 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.[11]

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).[12] In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[13] After the CDX is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[14] 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.[15]

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[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Id. See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[10] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

[11] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

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

[13] *See* A.M.A., *Guides* 509, Table 16-3.

[14] *Id*. at 515-22.

[15] *Id*. at 23-28.

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 impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[16]

ANALYSIS

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

Appellant submitted an October 3, 2017 report from Dr. Watkins Campbell to support his claim for a schedule award. Dr. Watkins Campbell reviewed appellant's history and conducted an examination. She reported a diagnosis of right knee strain. Utilizing the DBI methodology under Table 16-3, page 509 of the sixth edition of the A.M.A., *Guides*, Dr. Watkins Campbell found that appellant had a class 1, grade C impairment for "mild motion deficits" with a default value of seven. She assigned grade modifiers and applied the net adjustment formula to find a net adjustment of 0, which yielded seven percent right lower extremity permanent impairment.

OWCP properly referred the evidence of record to a DMA, Dr. White. In his June 12, 2019 report, the DMA disagreed with Dr. Watkins Campbell's impairment rating of seven percent because it was based on the (CDX) for a knee strain, class 1 impairment for "mild motion deficits." He correctly explained that Dr. Watkins Campbell provided right knee ROM for flexion of 120, 120 and 125 degrees and for flexion contracture of -14, -10, and -9 degrees. Pursuant to Table 16-23, Knee Motion Impairments, these findings were normal and would not be appropriately rated as "mild motion deficits." Rather, "palpatory findings" more accurately described appellant's condition. The Board has held that, when an attending physician's report gives an estimate of permanent impairment, but it is not based on proper application of the A.M.A., *Guides*, OWCP may follow the advice of the DMA if he or she has properly applied the A.M.A., *Guides*.[17] In his June 12, 2019 report, the DMA properly applied the A.M.A., *Guides* to the physical examination findings of Dr. Watkins Campbell. He noted that the physical examination of record did not demonstrate mild motion deficits and correctly noted the CDX resulted in a class 1 impairment most consistent with "palpatory findings" with a default value of two. The DMA and Dr. Watkins Campbell both recommended the same grade modifiers and provided a calculation of the net adjustment formula. The Board finds that the DMA accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition which comported with his findings, and with the appropriate provisions of the A.M.A.,

[16] *See supra* note 10 at Chapter 2.808.6(f) (March 2017). *See also P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

[17] *See J.D.*, Docket No. 19-0414 (issued August 19, 2019); *P.L.*, Docket No. 17-0355 (issued June 27, 2018); *see also Ronald J. Pavlik*, 33 ECAB 1596 (1982).

Guides.[18] The DMA's report therefore carries the weight of the medical evidence and establishes that appellant has two percent permanent impairment of his right lower extremity.[19]

On appeal counsel contends that OWCP failed to give due deference to the findings of appellant's attending physician. The Board finds that this assertion is not meritorious. As explained above, appellant has not established greater than two percent permanent impairment of his right lower extremity.

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.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[18] *See J. M.*, Docket No. 18-1387 (issued February 1, 2019).

[19] *See F.T.*, Docket No. 16-1236 (issued March 12, 2018).