United States Department of Labor
Employees' Compensation Appeals Board

N.B., Appellant	)	
	)	
and	)	**Docket No. 22-1295**
	)	**Issued: May 25, 2023**
DEPARTMENT OF HEALTH & HUMAN SERVICES, FOOD & DRUG ADMINISTRATION, Takoma, WA, 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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 2, 2022 appellant filed a timely appeal from an August 10, 2022 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than one percent permanent impairment of her left lower extremity, for which she previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 12, 2017 appellant, then a 54-year-old consumer safety officer, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2017 a dog attacked her when she walked along a driveway in the course of inspecting a property while in the performance of duty. She asserted that she sustained a full-mouth dog bite and bruising on her left buttock, three deep lacerations on her right calf, and additional puncture wounds and scrapes on her right leg. Appellant stopped work on the date of the claimed injury and returned to work on August 25, 2017 in a modified-duty job without wage loss.[2] OWCP accepted her claim for open dog bites of the left buttock and right calf; and subsequently expanded the acceptance of her claim to include strain of muscle, fascia, and tendon of the left hip; traumatic shock; and chronic post-traumatic stress disorder. It paid appellant wage-loss compensation on the supplemental rolls, effective November 13, 2017.

A February 26, 2019 magnetic resonance imaging (MRI) scan of the left hip revealed partial tears of the distal left gluteus minimus tendon extending to the greater trochanteric insertion, bilateral hamstring tendons at the ischial tuberosity origins, and ligamentum teres at the foveal attachment. The MRI scan also showed mild bilateral greater trochanteric bursitis.

In an August 6, 2019 report, Dr. Jason C. King, a Board-certified orthopedic surgeon, indicated that appellant was seen for the left hip conditions of trochanteric bursitis and partial tears of the gluteus medius and gluteus minimus. He noted that she needed to undergo a rating for permanent impairment and advised her that she should avoid engaging in roundhouse kicks and quick abduction and internal rotation maneuvers as part of her home exercise regimen.

On December 28, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On January 22, 2021 OWCP referred appellant, along with the case record and a statement of accepted facts (SOAF), for a second opinion examination and evaluation with Dr. Richard White, a Board-certified orthopedic surgeon. It requested that Dr. White provide an opinion on appellant's lower extremity permanent impairment under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3]

In a February 26, 2021 report, Dr. White detailed appellant's factual and medical history, and reported the findings of his physical examination. He noted that appellant had well-healed scars on the popliteal area of her right knee with the largest scar measuring approximately 1 centimeter (cm) in width and 13 cm in length horizontally across the length of her popliteal fossa. In the same area, appellant also had a five-cm horizontal well-healed wound, other possible puncture wounds approximately one cm in length, and an additional scarring line which was five cm long. Dr. White indicated that these scars did not exhibit erythema, ecchymosis, or swelling. He advised that the left buttock area had no obvious scarring, although there could be possible

[2] The case record contains a July 10, 2017 report from an emergency room describing the suturing/stitching of wounds from the dog attack.

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

light scarring when compared to the opposite buttock, and noted that there was no erythema, ecchymosis, or swelling in this area. Dr. White reported that both lower extremities had full confrontational strength without weakness or deficits, sensation was subjectively intact throughout both lower extremities, and that no abnormal lower extremity reflexes were observed. The right knee exhibited range of motion (ROM) from 0 degrees of extension to 140 degrees of flexion, and was stable to varus and valgus stress. Dr. White noted that active bilateral hip ROM was from 0 degrees of extension to 100 degrees of flexion without deficits. He indicated that appellant subjectively continued to complain of pain at the greater trochanteric area of the left hip as well as the right popliteal fossa area of the right knee.

For the right lower extremity, Dr. White referred to the sixth edition of the A.M.A., *Guides* 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 appellant's accepted right leg bite met the criteria for a soft tissue lesion which fell under class 1 with a default value of 1. He assigned a grade modifier for functional history (GMFH) of 1, a grade modifier for physical examination (GMPE) of 0, and a grade modifier for clinical studies (GMCS) of 0. Dr. White utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (0 - 1) + (0 - 1) = -2, which resulted in a grade A or zero percent permanent impairment of the right lower extremity. For the left lower extremity, he analyzed two separate accepted left lower extremity conditions. First, Dr. White utilized the DBI rating method to find that, under Table 16-4 (Hip Regional Grid) on page 512, appellant's accepted left buttock bite met the criteria for a soft tissue lesion which fell under class 1 with a default value of 1. He assigned a GMFH of 1, a GMPE of 0, and a GMCS of 0. Dr. White utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (0 - 1) + (0 - 1) = -2, which resulted in a grade A or zero percent permanent impairment of the left lower extremity. Second, he utilized the DBI rating method to find that, under Table 16-4 on page 512, the CDX for appellant's left hip tendon strain resulted in a class 1 impairment with a default value of 1. Dr. White assigned a GMFH of 1, a GMPE of 0, and a GMCS of 1. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (0 - 1) + (1 - 1) = -1, which resulted in a grade B or one percent permanent impairment of the left lower extremity.[4] Dr. White noted that appellant's lower extremity conditions did not meet the criteria for applying the ROM impairment rating method. Therefore, he concluded that appellant's only documented permanent impairment of a lower extremity was the one percent permanent impairment of the left lower extremity.

On April 1, 2021 OWCP referred appellant's case to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), and requested that he provide an opinion regarding Dr. White's permanent impairment rating. In an April 20, 2021 report, Dr. Harris provided an assessment of appellant's lower extremity permanent impairment which was in accordance with that of Dr. White. He concluded that appellant had zero percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity.

[4] Dr. White found that appellant had reached maximum medical improvement (MMI) by February 26, 2021, the date of his examination.

By decision dated May 13, 2021, OWCP granted appellant a schedule award for one percent permanent impairment of the left lower extremity. The award ran for 2.88 weeks from February 26 through March 18, 2021 and was based on the February 26, 2021 report of Dr. White and the April 20, 2021 report of Dr. Harris.

On May 12, 2022 appellant requested reconsideration of OWCP's May 13, 2021 decision. She resubmitted several reports from healthcare providers, including Dr. King, which were dated between July 10, 2017 and June 4, 2019. Appellant also submitted photographs of her injuries taken on an unspecified date or dates.

By decision dated August 10, 2022, OWCP denied modification of its May 13, 2021 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing federal regulations[6] 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 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.[7] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[8]

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that diagnosis-based impairment is the primary method of calculation for the lower limb and that most impairments are based on the diagnosis-based impairment where impairment class is determined by the diagnosis and specific criteria as adjusted by the GMFH, GMPE, and GMCS. It further provides that alternative approaches are also provided for calculating impairment for peripheral nerve deficits, complex regional pain syndrome, amputation, and ROM. ROM is primarily used as a physical examination adjustment factor.[9] The A.M.A., *Guides*, however also explain that some of the diagnosis-based grids refer to the ROM section when that is the most appropriate mechanism for grading the impairment. This section is to be used as a stand-alone

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id.*; *see V.J.*, Docket No. 1789 (issued April 8, 2020); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[9] A.M.A., *Guides* (6th ed. 2009) 497, section 16.2.

rating when other grids refer to this section or no other diagnosis-based sections of the chapter are applicable for impairment rating of a condition.[10]

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 knees and hips, reference is made to Table 16-3 (Knee Regional Grid) and Table 16-4 (Hip Regional Grid), respectively.[11] Under each table, after the CDX is determined and a default grade value is identified, the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] 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.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than one percent permanent impairment of her left lower extremity, for which she previously received a schedule award.

In a February 26, 2021 report, Dr. White, an OWCP referral physician, provided an evaluation of the permanent impairment of the lower extremities. For the right lower extremity, he referred to the sixth edition of the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 16-3 (Knee Regional Grid) on page 509, the CDX for appellant's accepted right leg bite met the criteria for a soft tissue lesion, which fell under class 1 with a default value of 1. Dr. White assigned a GMFH of 1, a GMPE of 0, and a GMCS of 0. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (0 - 1) + (0 - 1) = -2, which resulted in a grade A or zero percent permanent impairment of the right lower extremity. For the left lower extremity, Dr. White analyzed two separate accepted left lower extremity conditions. First, he utilized the DBI rating method to find that, under Table 16-4 (Hip Regional Grid) on page 512, appellant's accepted left buttock bite met the criteria for a soft tissue lesion, which fell under class 1 with a default value of 1. Dr. White assigned a GMFH of 1, a GMPE of 0, and a GMCS of 0. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (0 - 1) + (0 - 1) = -2, which resulted in a grade A or zero percent permanent impairment of the left lower extremity. Second, Dr. White utilized the DBI rating method to find that, under Table 16-4 on page 512, the CDX for appellant's left hip strain resulted in a class 1 impairment with a default value of 1. He assigned a GMFH of 1, a GMPE of 0, and a GMCS of 1. Dr. White utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (0 - 1) + (1 - 1) = -1, which resulted in a grade B or one percent

[10] *Id.* at 543; *see also M.D.*, Docket No. 16-0207 (issued June 3, 2016); *D.F.*, Docket No. 15-0664 (issued January 8, 2016).

[11] A.M.A., *Guides* 509-15.

[12] *Id* at 515-22.

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

permanent impairment of the left lower extremity.[14] He noted that appellant's lower extremity conditions did not meet the criteria for applying the ROM impairment rating method.[15] Therefore, Dr. White concluded that appellant's only documented permanent impairment of a lower extremity was this one percent permanent impairment of the left lower extremity.

In an April 20, 2021 report, Dr. Harris, the DMA, provided an assessment of appellant's lower extremity permanent impairment which was in accordance with that of Dr. White. He concluded that appellant had zero percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity.

The Board finds that the well-rationalized reports of Dr. White and Dr. Harris provide an opinion on appellant's lower extremity permanent impairment which were derived in accordance with the standards of the sixth edition of the A.M.A., *Guides* and therefore are entitled to the weight of the evidence.[16] Their calculations, including the derivation of grade modifiers and the application of the net adjustment formula, properly applied the relevant standards to the physical examination and diagnostic testing results.

After OWCP granted appellant a schedule award on May 13, 2021, she resubmitted several reports from healthcare providers, including Dr. King, which were dated between July 10, 2017 and June 4, 2019. She also submitted photographs of her injuries taken on an unspecified date or dates. However, these documents do not contain a permanent impairment rating conducted under the standards of the sixth edition of the A.M.A., *Guides* and are of no probative value regarding appellant's permanent impairment.[17]

As there is no rationalized medical report providing a rating of permanent impairment greater than that provided by Dr. White and Dr. Harris, the Board finds that appellant had not met her burden of proof to establish greater than one percent permanent impairment of her left lower extremity, for which she received a schedule award.[18]

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.

[14] Dr. White found that appellant had reached MMI by February 26, 2021, the date of his examination.

[15] Table 16-3 and Table 16-4 do not provide for use of the ROM method to rate a claimant's lower extremity impairment. *See* A.M.A., *Guides* 509-15. *See also supra* notes 9 and 10.

[16] *See Y.S.*, Docket No. 19-0218 (issued May 15, 2020); *R.D.*, Docket No. 17-0334 (issued June 19, 2018).

[17] *See N.A.*, Docket No. 19-0248 (issued May 17, 2019).

[18] *M.G.*, Docket No. 19-0823 (issued September 17, 2019); *I.T.*, Docket No. 18-1049 (issued December 31, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than one percent permanent impairment of her left lower extremity, for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 25, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board