

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board. By decision and order issued April 9, 2003,<sup>2</sup> the Board affirmed a June 24, 2002 decision of the Office granting additional schedule awards for a 28 percent impairment of the right lower extremity for a total of 51 percent, and an additional 15 percent impairment of the left lower extremity for a total of 57 percent. The law and the facts of the case as set forth in the Board's prior decision are incorporated by reference.

In an August 13, 2007 report, Dr. Nasim A. Rana, an attending Board-certified orthopedic surgeon, diagnosed severe osteoarthritis of the right knee with flexion contracture. He noted that appellant underwent total left knee arthroplasty and now required a total right knee arthroplasty. Dr. Rana opined that appellant's bilateral knee conditions continued to be causally related to accepted bilateral meniscal tears and patellar chondromalacia. On October 31, 2007 He performed a total right knee replacement, approved by the Office. Dr. Rana submitted periodic reports through May 2008 finding a good range of right knee motion with excellent alignment.

On October 14, 2009 appellant claimed an additional schedule award. In an October 29, 2009 letter, the Office advised him to submit an impairment evaluation from his attending physician utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*).

Appellant submitted a November 19, 2009 impairment evaluation by Dr. Robert Snowden, an attending Board-certified orthopedic surgeon, who noted that both knees were stable and well aligned, without significant effusion. He did not require knee supports and was able to walk well and exercise moderately. Dr. Snowden found full extension of both knees, active flexion of 125 degrees on the right and 130 degrees on the left. The left patella was surgically absent. Dr. Snowden opined that appellant remained at maximum medical improvement with no change needed in the impairment rating of either knee.

The Office asked an Office medical adviser to review the medical record and provide an impairment rating according to the sixth edition of the A.M.A., *Guides*. In a December 21, 2009 report, an Office medical adviser reviewed the record and found that appellant had reached maximum medical improvement as of November 19, 2009. He characterized appellant's range of knee motion as excellent. Referring generally to the sixth edition of the A.M.A., *Guides*, the medical adviser opined that there was no basis for an additional schedule award for impairment of either lower extremity.

By decision dated January 19, 2010, the Office denied appellant's claim for an additional schedule award on the grounds that the medical evidence did not establish impairment greater than the 51 percent previously awarded for impairment of the right leg and 57 percent for impairment of the left leg. It found that Dr. Snowden and the Office medical adviser opined that appellant did not have any additional impairment of either leg.

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<sup>2</sup> Docket No. 02-2017 (issued April 9, 2003).

In a February 3, 2010 letter, appellant requested an oral hearing. In a March 31, 2010 letter, the Office's Branch of Hearings and Review notified appellant that a telephonic hearing was scheduled for May, 6, 2010 at 10:15 a.m. Eastern Time. It instructed him to call the provided toll-free number a few minutes before the hearing time and enter the pass code to gain access to the conference call. The notice was mailed to appellant's address of record. Appellant did not participate in the telephonic hearing.

By decision dated May 21, 2010, the Office's Branch of Hearings and Review found that appellant abandoned his requested hearing. The decision noted that the telephone hearing was scheduled for May 6, 2010, but he failed to appear as instructed. It found that there was no evidence that appellant contacted the Office either prior or subsequent to the scheduled hearing to explain his failure to participate. Based on these facts, the Office concluded that appellant abandoned his oral hearing request.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provisions of the Act provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. 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. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>3</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.<sup>4</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>5</sup> Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).<sup>6</sup> The net adjustment formula is (GMFH-CDX) + (GMPE - DCX) + (GMCS- CDX).

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<sup>3</sup> Bernard A. Babcock, Jr., 52 ECAB 143 (2000).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008), page 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

<sup>6</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008), pp. 494-531.

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained bilateral knee injuries and conditions resulting in bilateral total arthroplasties. Appellant received schedule awards for a 51 percent impairment of the right lower extremity and a 57 percent impairment of the left lower extremity. He claimed an additional schedule award on October 14, 2009. Appellant submitted a November 19, 2009 impairment evaluation by Dr. Snowden, an attending Board-certified orthopedic surgeon, who opined that appellant did not have any additional impairment of either lower extremity.

The Office then asked an Office medical adviser to provide an updated impairment rating according to the sixth edition of the A.M.A., *Guides*. In a December 21, 2009 report, an Office medical adviser reviewed the record and found no basis for an additional schedule award. Although he referred generally to the sixth edition of the A.M.A., *Guides*, he did not cite to any specific table, figure or rating scheme. The medical adviser did not provide sufficient explanation of the evidence to establish that there was no additional impairment. This lack of rationale is contrary to the Office's procedures, which state that the Office medical adviser should provide rationale for the percentage of impairment specified.<sup>7</sup> As the medical adviser did not do so, the January 19, 2010 decision will be set aside and the case remanded to obtain a supplemental report from the medical adviser. After such further development as the Office deems necessary, it should issue an appropriate decision regarding appellant's claim of a schedule award for additional impairment of the left and right lower extremities.

As the case will be remanded to the Office for further development on the schedule award issue, the second issue regarding whether the Office properly found that appellant abandoned a hearing is moot.

### **CONCLUSION**

The Board finds that the case is not in posture for a decision regarding as to appellant's permanent impairment of the right and left lower extremities. The case will be remanded for further development on this issue. The Board further finds that the issue of whether appellant abandoned his request for a hearing is moot.

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6d(1) (January 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 21 and January 19, 2010 are set aside and the case remanded for further development consistent with this decision.

Issued: April 13, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board