

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>R.B., Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 11-431</b>
	)	<b>Issued: October 13, 2011</b>
<b>U.S. POSTAL SERVICE, CAPITAL METRO OPERATIONS, Gaithersburg, MD, Employer</b>	)	
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<i>Appearances:</i>	Oral Argument September 6, 2011
<i>Stephen H. Chirumbole, Esq.,</i> for the appellant	
<i>No appearance,</i> for the Director	

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 14, 2010 appellant's counsel timely appealed the November 16, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed his previous schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> 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 greater than seven percent impairment of both the left and right lower extremities.

**FACTUAL HISTORY**

Appellant, then a 62-year-old retired information systems specialist, has an accepted occupational disease claim for bilateral degenerative arthritis of the knees, which arose on or

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

about October 7, 2004.<sup>2</sup> He also had meniscal tears in both knees, which were surgically repaired on August 5 and December 2, 2005. Additionally, appellant claimed to have sustained an employment-related herniated disc (L3-4). OWCP has not accepted herniated lumbar disc, bilateral meniscal tears or the associated arthroscopic surgeries. The January 3, 2008 acceptance of the claim did not specifically address any other diagnosed conditions, but merely noted appellant's claim had been accepted for bilateral degenerative arthritis of the knees.<sup>3</sup> On April 17, 2009 OWCP amended the statement of accepted facts (SOAF) to reflect that, as of January 3, 2008, appellant's occupational disease claim had been accepted for bilateral degenerative arthritis of the knees.<sup>4</sup>

On March 30, 2010 OWCP granted a schedule award for seven percent impairment of both the left and right lower extremities.<sup>5</sup> Appellant's physician, Dr. Robert W. Macht, found 16 percent impairment bilaterally under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2008).<sup>6</sup> His December 7, 2009 rating was based on a combination of impairments for primary knee joint arthritis (7 percent) and meniscal injury (10 percent).<sup>7</sup> In a report dated March 18, 2010, the district medical adviser (DMA) explained that the sixth edition of the A.M.A., *Guides* provided that in most cases only one diagnosis in a region would be appropriate.<sup>8</sup> Thus, it was inappropriate to combine impairments for both arthritis and meniscal injury. The DMA found that the appropriate rating under the A.M.A., *Guides* would be the 10 percent rating for partial medial and lateral meniscectomies. However, because OWCP had not accepted meniscal tears, the DMA recommended an award of seven percent for each lower extremity due to arthritis.<sup>9</sup> It based the March 30, 2010 schedule award on the DMA's recommendation.

By decision dated November 16, 2010, the Branch of Hearings and Review affirmed the March 30, 2010 schedule award.

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<sup>2</sup> Appellant retired effective March 21, 2006.

<sup>3</sup> OWCP accepted appellant's claim following referral to Dr. Hamid R. Quraishi, a Board-certified orthopedic surgeon and impartial medical examiner. In an October 18, 2007 report, Dr. Quraishi diagnosed status post bilateral arthroscopic surgeries with early degenerative arthritis of the left knee. He also diagnosed chronic lumbosacral strain, with bulging disc at L3. Dr. Quraishi indicated that appellant's lower back problem was degenerative in nature and not employment related. As to appellant's knees, he indicated that the condition was work related. Dr. Quraishi also indicated that the prior "bilateral arthritic" surgeries were work related and justified.

<sup>4</sup> The previous SOAF, dated October 4, 2007, was prepared in advance of the case being referred to Dr. Quraishi to resolve a conflict in medical opinion.

<sup>5</sup> The award covered a period of 40.32 weeks from December 2, 2006 through September 10, 2007.

<sup>6</sup> Dr. Macht is a general surgeon, but he is not Board-certified in surgery.

<sup>7</sup> Table 16-3, Knee Regional Grid (LEI), A.M.A., *Guides* 509, 511.

<sup>8</sup> Section 16-2, Diagnosis-Based Impairment, A.M.A., *Guides* 497.

<sup>9</sup> While Dr. Macht found appellant had reached maximum medical improvement (MMI) as of the date of his November 30, 2009 examination, the DMA indicated that MMI had been attained one year after appellant's December 2, 2005 right knee arthroscopy.

## LEGAL PRECEDENT

Section 8107 FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>10</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>11</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).<sup>12</sup>

## ANALYSIS

OWCP accepted appellant's claim for bilateral degenerative arthritis of the knees. At oral argument, appellant's counsel took exception to the April 17, 2009 SOAF because it did not identify bilateral meniscal tears and the August 5 and December 2, 2005 arthroscopic surgeries as employment related. He quoted Dr. Quraishi's October 18, 2007 report wherein he stated that appellant's "problems with both knees [were] work related ... and the surgery done by Dr. [Phillip B.] Bovell [was] related to that and [was] justified."<sup>13</sup> Because the SOAF omitted certain information, counsel argued that it was flawed. He further argued that the DMA's March 18, 2010 report, which was based in part on the SOAF, was similarly flawed.

Contrary to counsel's argument, the SOAF is not flawed. The April 17, 2009 addendum accurately reflected the only condition OWCP accepted as employment related -- bilateral degenerative arthritis of the knees. Counsel is also mistaken to the extent he believes Dr. Quraishi's October 18, 2007 findings should have been included in the SOAF. A SOAF may include prior medical history, concurrent medical conditions and medical treatment received, including initial medical treatment, surgeries, diagnostic testing and other relevant medical procedures, but OWCP should not include a recitation of medical opinions or findings.<sup>14</sup> Specific medical opinions, as distinguished from the medical history of the claim, should not be included in the SOAF.<sup>15</sup>

Although counsel focused on the so-called "flawed" SOAF, his real issue appeared to be OWCP's acceptance of only bilateral degenerative arthritis of the knees. Since the January 3,

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<sup>10</sup> For a total loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

<sup>11</sup> 20 C.F.R. § 10.404 (2010).

<sup>12</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

<sup>13</sup> Dr. Bovell is an orthopedic surgeon who performed both the August 5 and December 2, 2005 arthroscopic surgeries.

<sup>14</sup> FECA PM, Part 2 -- Claims, *Statements of Accepted Facts*, 2.809.6 (September 2009).

<sup>15</sup> *Id.* at 2.809.7c.

2008 acceptance of the claim, neither appellant nor his representatives have formally petitioned OWCP to expand the claim beyond the accepted condition of bilateral degenerative arthritis of the knees. OWCP has not provided any definitive findings as to why appellant's bilateral meniscal tears and subsequent surgeries have not been accepted. Absent such findings, the issue is not currently before the Board. The Board further notes that counsel's reliance on Dr. Quraishi's October 18, 2007 opinion to establish an employment-related meniscal injury is somewhat misplaced. Nowhere in Dr. Quraishi's report does he reference an injury to either the left or right meniscus. He also did not properly identify the type of surgery appellant underwent on August 5 and December 2, 2005. Rather than noting partial medial and lateral meniscectomies, Dr. Quraishi described the procedures as "bilateral arthritic" surgeries. This rather vague description is most likely due to the fact that appellant did not submit copies of both operative reports until approximately two years after his October 2007 examination. Dr. Quraishi also referenced magnetic resonance imaging (MRI) scans of both knees dated April 15, 2005, but he did not discuss the results. The scans showed bilateral meniscal tears, however, they too were not submitted into the record until December 2009.

The only issue presently before the Board is whether OWCP properly found that appellant had seven percent impairment of each lower extremity. Dr. Macht and the DMA both agreed that appellant had at least seven percent impairment bilaterally due to arthritis. That rating is consistent with the A.M.A., *Guides* (6<sup>th</sup> ed. 2008).<sup>16</sup> The DMA also correctly noted that it was inappropriate to combine diagnosis-based impairments for both arthritis and meniscal injury.<sup>17</sup> Because the claim had not been accepted for bilateral meniscal injury, OWCP properly limited the award to the arthritis-related bilateral knee impairment.<sup>18</sup>

The Board finds that the DMA's March 18, 2010 impairment rating conforms to the A.M.A., *Guides* (6<sup>th</sup> ed. 2008), and thus, represents the weight of the medical evidence regarding the extent of appellant's left and right lower extremity impairment. Appellant has not submitted any credible medical evidence indicating he has a greater impairment than previously awarded.

### **CONCLUSION**

Appellant has not established that he has greater than seven percent impairment of the left and right lower extremities.

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<sup>16</sup> See Table 16-3, Knee Regional Grid (LEI), A.M.A., *Guides* 511.

<sup>17</sup> Section 16-2, Diagnosis-Based Impairment, A.M.A., *Guides* 497.

<sup>18</sup> Any previous impairment of the member under consideration is generally included in calculating the percentage of loss. *R.D.*, 59 ECAB 127, 130 (2007); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(2) (January 2010). The current record does not definitively establish that appellant's meniscal tears preceded the arthritis as both conditions were confirmed by an April 15, 2005 MRI scan.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board