

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

OWCP accepted aggravation of left knee osteoarthritis. On February 9, 2010 appellant retired from the employing establishment. On June 10, 2010 he filed a claim for a schedule award.

In a June 7, 2010 report, Dr. Byron V. Hartunian, an orthopedic surgeon, noted evaluating appellant on March 11, 2010. He presented his review of appellant's medical record and examination findings and opined that maximum medical improvement was reached by June 2009, one year after the second knee revision arthroplasty. Dr. Hartunian concluded that appellant had 37 percent impairment to the left leg under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) for a total knee replacement. He indicated that under Table 16-3 the diagnostic criteria for total knee replacement placed appellant into class 3 as his physical examination indicated a mild motion deficit by Table 16-23. Physical examination was not used as a grade modifier as it was used to identify the class designation. Dr. Hartunian assigned grade modifier of 4 for clinical studies as there was no cartilage interval per Table 16-8 and a grade modifier of 2 for functional history. He found that the net adjustment formula yielded zero adjustment and that the final impairment was class 3, grade C or 37 percent impairment.

On June 24, 2010 Dr. Barry W. Levine, a Board-certified internist serving as OWCP's medical adviser, reviewed the medical evidence, including Dr. Hartunian's June 7, 2010 examination findings, and determined that appellant had 37 percent left lower extremity impairment under the A.M.A., *Guides*. Table 16-3, page 511 of the A.M.A., *Guides* was used with a diagnosis of total knee replacement with zero grade modifier adjustments. Maximum medical improvement was June 7, 2010, the date of Dr. Hartunian's examination.

On August 9, 2010 OWCP requested copies of appellant's medical record since 1994 before further adjudicating the schedule award claim. Following the submission of appellant's medical record prior to and after his knee replacements, it updated its statement of accepted facts and referred the record to another medical adviser, Dr. Christopher R. Brigham, Board-certified in occupational medicine, for an impairment evaluation. In a September 29, 2010 report, Dr. Brigham found that appellant reached maximum medical improvement on June 16, 2009, one year after the left knee revision surgery. He further opined that appellant had 31 percent left leg impairment for a diagnosed-based estimate of total knee replacement. Under Table 16-3, Dr. Brigham agreed with Dr. Hartunian that appellant had a class 3 rating based on residual mild motion deficits with a default score of 37 percent leg impairment. He found that grade modifiers for physical examination and clinical studies were not applicable but the grade modifier for functional history was zero, which moved the default finding of class 3, grade C to a final impairment of grade A or 31 percent.

In a November 9, 2010 decision, OWCP granted appellant a schedule award for 31 percent left lower extremity impairment. The award covered 624.96 weeks, from June 16, 2009 to March 2, 2011. The effective pay rate date was June 16, 2008.

Appellant requested a telephonic hearing which was held March 3, 2011. His attorney argued that OWCP's decision involved an incorrect application of the A.M.A., *Guides* as Dr. Brigham, the second OWCP medical adviser, erred in finding that the grade modifier for functional history was zero. Counsel further argued that OWCP erred in finding that the effective pay rate date was June 16, 2008, the date of appellant's surgery, as it should be

February 9, 2010, the date that appellant retired and was last exposed to work factors. Evidence submitted at the hearing consisted of appellant's affidavit regarding continuing exposure to injurious work factors and a hearing memorandum.

Dr. Hartunian prepared a March 3, 2011 report showing impairment of 50 percent of the left leg impairment based on accepted condition of knee arthritis.<sup>2</sup> He stated that maximum medical improvement was reached for the left knee by June 2009, after the revision knee arthroplasty.

By decision dated May 16, 2011, OWCP's hearing representative vacated the November 9, 2010 decision and remanded the case for calculation of appellant's left lower extremity impairment based on the accepted condition of aggravation of osteoarthritis. She directed that, after this and any further development deemed necessary, OWCP issue a *de novo* decision on the schedule award claim including the correct pay rate date.

On remand, OWCP forwarded the case file to a third medical adviser, Dr. Guillermo M. Pujadas, a Board-certified orthopedic surgeon, for an impairment evaluation. No instructions to rate the impairment were provided. In a May 17, 2011 report, Dr. Pujadas found that maximum medical improvement was achieved June 2009. He stated that Dr. Hartunian's impairment finding of 50 percent impairment based on arthritis was incorrect and did not follow the A.M.A., *Guides*. Using the diagnosed-based method for a total knee replacement, Dr. Pujadas calculated 21 percent impairment of the left leg. As appellant had previously been paid for 31 percent impairment to the left leg, Dr. Pujadas found that appellant did not have additional impairment.

Following OWCP's request to explain any disagreement with Dr. Hartunian's 37 percent left lower extremity impairment rating, Dr. Pujadas, in a May 19, 2011 report, argued that Dr. Hartunian's rating of 37 percent impairment was incorrect as appellant should be in class 2 rather than class 3 diagnosis for total knee replacement. OWCP then requested that Dr. Pujadas provide specific rationale as to why the 50 percent impairment based on the accepted condition of osteoarthritis of the left leg was incorrect. In a July 29, 2011 report, Dr. Pujadas stated that Dr. Hartunian should have provided impairment based on the diagnosis of total knee replacement, not arthritis. Using the diagnosed-based method for a total knee replacement, he calculated 21 percent permanent impairment of the left leg. Dr. Pujadas stated that appellant was class 2 with a grade C default value of 25 percent, which after adjustment, yielded 21 percent impairment.

In a September 28, 2011 decision, OWCP denied appellant's claim for an additional schedule award. It found that Dr. Hartunian's left leg impairment rating of 50 percent, based on arthritis, was incorrect as it should be based on the diagnosis of total knee replacement. OWCP accorded determinative weight to Dr. Pujada's opinion that appellant had 21 percent permanent impairment of the left lower extremity based on a class 2 designation.

On appeal appellant's counsel argues that OWCP did not properly follow the A.M.A., *Guides* when it developed the schedule award issue based on the osteoarthritis condition and all

---

<sup>2</sup> The hearing transcript reveals appellant's attorney disagreed with using an impairment analysis based on the accepted condition of arthritis.

reports generated as a result should be disregarded. He contends that appellant is due additional schedule award compensation based on the condition of total knee replacement for a total award of 37 percent left leg impairment as found by appellant's physician and the first medical adviser. Counsel further argues that the pay rate issue was never addressed by OWCP.

### **LEGAL PRECEDENT**

The schedule award provision of FECA and its implementing regulations<sup>3</sup> 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.<sup>4</sup> 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

In determining entitlement to a schedule award, preexisting impairment to the scheduled member should be included.<sup>7</sup> Any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.<sup>8</sup>

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.<sup>9</sup> After the class for diagnosed condition (CDX) is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) +

---

<sup>3</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

<sup>4</sup> *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

<sup>5</sup> *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & 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>7</sup> *Carol A. Smart*, 57 ECAB 340 (2006); *Michael C. Milner*, 53 ECAB 446 (2002).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(a)(2) (January 2010).

<sup>9</sup> *See* A.M.A., *Guides* 509-11 (6<sup>th</sup> ed. 2009).

(GMPE - CDX) + (GMCS - CDX).<sup>10</sup> 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.<sup>11</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>12</sup>

### ANALYSIS

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

OWCP accepted appellant's claim for aggravation of left knee osteoarthritis. On November 9, 2010 it granted him a schedule award for 31 percent impairment of the left leg based on a total knee replacement. The effective pay rate date was June 16, 2008. After appellant requested a hearing, OWCP developed the impairment issue for the accepted osteoarthritis condition but subsequently found that an impairment based on total knee replacement was proper. By decision dated September 28, 2011, it denied his claim for an increased schedule award by according determinative weight to Dr. Pujadas, the third medical adviser in this case, who determined that appellant had 21 percent impairment to the left leg. The pay rate issue was not addressed.

Initially, the Board notes that it was proper for the impairment rating in this case to be based on the diagnosed total knee replacement and not on the accepted condition of aggravation of osteoarthritis. Diagnosis-based impairment is the primary method of evaluating the lower extremity. Impairment is determined first by identifying the relevant diagnosis, then by selecting the class of the impairment (no objective problem, mild problem, moderate problem, severe problem or very severe problem approaching total function loss), which will provide a default impairment rating and finally by adjusting the default rating up or down using appropriate grade modifiers or nonkey factors, such as functional history, physical examination or clinical studies.<sup>13</sup> This process is repeated for each separate diagnosis in each limb involved. In most cases, only one diagnosis in a region will be appropriate. If a patient has two significant diagnoses, the examiner should use the diagnosis with the highest impairment rating in that region that is causally related for the impairment calculation.<sup>14</sup> The accepted condition in this case, aggravation of osteoarthritis, should be evaluated under the diagnosed-based impairment method which would allow for the most clinically accurate impairment rating. As appellant

---

<sup>10</sup> *Id.* at 515-22.

<sup>11</sup> *Id.* at 23-28.

<sup>12</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

<sup>13</sup> A.M.A., *Guides* 497. When clinical studies are used to select the class of impairment, the same findings may not be used again as grade modifiers to adjust the rating. A.M.A., *Guides* 500.

<sup>14</sup> A.M.A., *Guides* 497.

underwent total knee replacement, that condition would provide the most clinically accurate impairment rating as that is the most accurate description of appellant's condition.

In a June 7, 2010 report, Dr. Hartunian opined that maximum medical improvement of the left knee was reached by June 2009, one year after the second revision knee arthroplasty. He calculated 37 percent impairment to the left leg based on the total knee replacement under the sixth edition of the A.M.A., *Guides*. Under Table 16-3, knee diagnostic grid, Dr. Hartunian placed appellant's total knee replacement in a class 3 with a default value of 37 percent as his physical examination indicated a mild motion deficit. He found grade modifier for physical examination was not applicable as it was used to identify the class designation.<sup>15</sup> Dr. Hartunian assigned grade modifier of 4 for clinical studies as there was zero cartilage interval per Table 16-8 and a grade modifier of 2 for functional history. Under the net adjustment formula, (GMFH - CDX) (2-3) + (GMCS - CDX) (4 -3) yields a net adjustment of zero, for a final impairment of 37 percent.

The first medical adviser, Dr. Levine, reviewed the June 7, 2010 report of Dr. Hartunian and concurred that appellant had 37 percent left leg impairment based on a total knee replacement. However, he did not provide any reference to or discussion of how he determined grade modifiers used in the net adjustment formula as described in section 16.3 of the sixth edition to reach the appropriate grade within the class of diagnosis.<sup>16</sup> As such, Dr. Levine's impairment rating requires further explanation.<sup>17</sup> Furthermore, when OWCP obtained additional medical evidence about appellant's left knee preexisting osteoarthritis, it is not clear why OWCP sent appellant's case record to another OWCP medical adviser for an impairment evaluation review when Dr. Levine already had a familiarity with appellant's case file. OWCP should have obtained a supplemental opinion from Dr. Levine.

The Board will remand the case to OWCP to undertake additional development of the medical evidence to appropriately determine if appellant has an additional impairment of the left lower extremity for schedule award purposes. On remand, OWCP should request clarification from its medical adviser, Dr. Levine, and develop the medical evidence as appropriate to determine the extent of permanent impairment due to appellant's accepted employment injury under the sixth edition of the A.M.A., *Guides*. If OWCP's medical adviser, Dr. Levine, is unable to provide such clarification, appellant shall be referred for a second opinion. Following this and such other development as it deems necessary, OWCP shall issue an appropriate merit decision.

On appeal, appellant's counsel requests that the Board provide instructions regarding pay rate, which OWCP never addressed despite his requests. When OWCP granted appellant a schedule award of 31 percent to the left leg on November 9, 2010, it found that the effective pay rate date was June 16, 2008. Counsel has argued that appellant's pay rate should be based on the date of retirement, February 9, 2010, as he was continuingly exposed to work factors up to that

---

<sup>15</sup> See A.M.A., *Guides* 516 (if a grade modifier or nonkey factor is used for primary placement in the regional grid, it may not be used again in the impairment calculation).

<sup>16</sup> A.M.A., *Guides* 515-18.

<sup>17</sup> See *L.H.*, 58 ECAB 561 (2007) (where impairment has not been correctly described, a new or supplemental evaluation should be obtained in accordance with OWCP procedures).

point. Although OWCP's hearing representative directed OWCP, in her May 16, 2011 decision, to consider the correct pay rate date, OWCP did not further address this matter. Section 8101(4) of FECA defines monthly pay for purposes of computing compensation benefits as follows: The monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.<sup>18</sup> In schedule award claims, at issue is the permanent impairment sustained resulting from such injury. In an occupational disease claim, as in this case, the date of injury is generally the date the employee was last exposed to the injurious employment factors.<sup>19</sup> Where exposure to work factors continues, the date of injury is the date of the relevant medical examination, *i.e.*, the date of the medical examination upon which the extent of permanent impairment has been determined.<sup>20</sup> As appellant had retired prior to Dr. Hartunian's June 7, 2010 report on June 7, 2010, OWCP should select appellant's monthly pay on the date of retirement when he was last exposed to injurious work factors, February 9, 2010, to compute appellant's rate of pay for compensation purposes. The case will, therefore, be remanded for OWCP to further develop the record as to appellant's pay rate and issue an appropriate merit decision.<sup>21</sup>

### **CONCLUSION**

The Board finds this case is not in posture for decision. On remand OWCP should obtain a supplementary report from Dr. Levine regarding appellant's impairment as well as properly calculate the pay rate and issue an appropriate merit decision.<sup>22</sup>

---

<sup>18</sup> 20 C.F.R. § 8101(4).

<sup>19</sup> See *Patricia K. Cummings*, 53 ECAB 623 (2002).

<sup>20</sup> *Id.*; see also *Barbara A. Dunnavant*, 48 ECAB 517 (1997) in which the Board held that the proper pay rate for the claimant's schedule award was the pay rate on the date of maximum medical improvement. *Dunnavant* involved continuing exposure to injurious work factors which did not cause further injury after the permanent impairment was stabilized; therefore, the date of injury was the date of last exposure, which was, for purposes of the schedule award issued, the date she was found to have reached maximum medical improvement. The Board explained that, where exposure to work factors continues, the date of injury is the date of the relevant medical evaluation, *i.e.*, the date of the medical examination upon which the extent of permanent impairment has been determined. *Id.* at 520.

<sup>21</sup> Due to the Board's disposition of appellant's case, it is not necessary to address counsels remanding arguments pertaining to the correct application of the A.M.A., *Guides* on appeal.

<sup>22</sup> Appellant submitted new evidence on appeal. The Board is precluded from considering evidence that was not before OWCP at the time of its final decision. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 28, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this opinion of the Board.

Issued: December 19, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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