

FACTUAL HISTORY

Appellant, a 45-year-old letter carrier, filed a Form CA-2 claim for benefits on November 30, 1995, alleging that he developed a right knee condition causally related to employment factors. OWCP accepted the claim for right knee chondromalacia of the right patella and authorized surgery.

In reports dated September 12, 2009 and July 30, 2010, Dr. William N. Grant, Board-certified in internal medicine, found that appellant had a 28 percent right lower extremity impairment stemming from his accepted right chondromalacia of the right patella condition. He stated that appellant had flexion contracture up to 15 degrees, which represented a moderate impairment of 20 percent, and flexion up to 80 degrees, which represented a mild impairment of 10 percent pursuant to Table 16-23 at page 549³ of the A.M.A., *Guides*. Using the Combined Values Chart at page 604,⁴ Dr. Grant found that appellant had a 28 percent total equal right lower extremity impairment, a class 3 severe impairment under Table 16-25 at page 550 of the A.M.A., *Guides*.

In a Form CA-7 dated April 25, 2011, appellant requested a schedule award based on a partial loss of use of his right lower extremity.

In order to determine the degree of appellant's right lower extremity impairment stemming from his accepted right knee condition, OWCP referred the statement of accepted facts and appellant's medical records to Dr. Manhal A. Ghanma, Board-certified in orthopedic surgery, for an impairment evaluation. In a May 9, 2011 report, Dr. Ghanma found that appellant had a 10 percent impairment of the right lower extremity pursuant to the A.M.A., *Guides*. He used the diagnosis-based impairment method, finding that, under Table 16-3, page 511,⁵ Knee Regional Grid, Lower Extremity Impairments, appellant had a two millimeter cartilage interval in the right knee. This yielded a class 1 rating for chondromalacia of the patella. In addition, Dr. Ghanma determined that appellant had a physical examination grade modifier of 1, at Table 16-7,⁶ the table pertaining to rating lower extremity impairments based on physical examination, based on minimal findings, including crepitation noted on examination. With regard to functional history, he assigned a grade modifier of 1, relying on the Adjustment Grid, Functional History at Table 16-6,⁷ and he rated a grade modifier of 1 for clinical studies at Table 16-8, Section 16.3c.⁸ Using the net adjustment formula at page 521,⁹ he subtracted the

³ America Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) (6th ed.) 549.

⁴ *Id.* at 604.

⁵ *Id.* at 511.

⁶ *Id.* at 517.

⁷ *Id.* at 516.

⁸ *Id.* at 519, 520.

⁹ *Id.* at 521.

grade modifier of 1 from physical examination, functional history and clinical studies for a net adjustment of zero, which produced a grade of C, for no adjustment, and a final right lower extremity impairment of 10 percent.

In a report dated May 26, 2011, an OWCP medical adviser concurred with Dr. Ghanma's findings and conclusions and recommended that appellant be granted an award for a 10 percent right lower extremity impairment.

By decision dated June 29, 2011, OWCP granted appellant a schedule award for a 10 percent permanent impairment of the right lower extremity for the period April 2 to October 20, 1996, for a total of 201.60 days of compensation.

On July 12, 2011 appellant, through his attorney, requested an oral hearing, which was held on October 12, 2011.

By decision dated December 19, 2011, an OWCP hearing representative affirmed the June 29, 2011 decision.

By letter dated July 2, 2012, appellant's attorney requested reconsideration. He submitted a January 23, 2012 report from Dr. Grant. This report was essentially an updated, version of Dr. Grant's September 12, 2009 and July 30, 2010 reports which rated a 28 percent right lower extremity impairment for appellant's right patella chondromalacia. Dr. Grant stated that range of motion can be used in evaluating appellant's impairment "because there is not a table that addresses either of these problems."

By decision dated March 28, 2013, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b) of the federal regulations, a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.¹⁰ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹¹

ANALYSIS

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by OWCP. Appellant submitted, with a request for reconsideration, a January 23,

¹⁰ 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

¹¹ *Howard A. Williams*, 45 ECAB 853 (1994).

2012 report from Dr. Grant, appellant's treating physician, who rated a 28 percent right lower extremity impairment based on loss of range of motion in the right knee. OWCP granted a 10 percent schedule award based on Dr. Ghanma's May 9, 2011 second opinion report, which, it found, outweighed the opinion of Dr. Grant, as Dr. Ghanma rendered his impairment rating in conformance with the applicable tables and charts of the A.M.A., *Guides*. Dr. Grant's January 23, 2012 report merely reiterates his previously stated findings and conclusions, which OWCP rejected in its previous decisions. This evidence is therefore cumulative and duplicative.¹²

Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. Dr. Grant's previous reports had also rated appellant's impairment as 28 percent impairment of the right lower extremity based upon loss of range of motion. Dr. Grant's statement in his January 23, 2012 report that appellant's loss of range of motion was the appropriate measure of his impairment does not show that OWCP erroneously rated appellant utilizing a diagnosed-based methodology. The sixth edition of the A.M.A., *Guides* states that range of motion is used primarily as a physical examination adjustment factor and only to determine actual impairment values when a grid permits its use as an option, this is a significant change from prior editions.¹³ Table 16-7, the applicable table for lower extremity physical examination adjustments utilizes range of motion as a grade modifier adjustment.¹⁴ OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

Appellant may request a schedule award or an increased schedule award based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

¹² See *Patricia G. Aiken*, 57 ECAB 441 (2006).

¹³ A.M.A., *Guides* 387.

¹⁴ *Id.* at 517.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board