

By decision dated October 10, 2006, the Office granted appellant a schedule award for seven percent permanent impairment of the right lower extremity.

On May 14, 2007 the Office accepted that appellant sustained a recurrence of a medical condition. On June 20, 2007 she underwent an arthroscopy of the right knee and excision of a ganglion cyst. The Office expanded acceptance of appellant's claim to include a benign neoplasm of connective and other soft issue of the right leg.

On October 30, 2007 appellant filed a claim for an increased schedule award. She submitted an impairment evaluation dated November 19, 2007 from Dr. Everett J. Wilkinson, Jr., an osteopath. Dr. Wilkinson found that, pursuant to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),¹ appellant had seven percent right lower extremity impairment.

In a decision dated March 21, 2008, the Office denied appellant's claim for an increased schedule award. It noted that she had previously received an award for seven percent right upper extremity impairment and that, consequently, Dr. Wilkinson's report did not show that she was entitled to an increased schedule award.

Appellant submitted numerous requests for reconsideration. In decisions dated May 8, July 30 and October 2, 2008 and February 2 and June 26, 2009, the Office denied modification of its finding that she was not entitled to an increased schedule award.

In an impairment evaluation dated September 11, 2009, Dr. Wilkinson related that appellant had continued pain and swelling of the right knee and "subjective and objective signs of instability." He noted that Cybex testing showed that she had significant knee impairment.² Referring to the fifth edition of the A.M.A., *Guides*,³ Dr. Wilkinson found that she had 2 percent disability due to pain according to Table 18-3 on page 575 and 12 percent impairment due to loss of muscle strength pursuant to Table 17-6 on page 532. He further found that appellant had 5 percent impairment due to 1.5 centimeters of muscle atrophy according to Table 17-6 on page 530. Dr. Wilkinson added the impairment findings to find a total right lower extremity impairment of 19 percent.

By letter received September 24, 2009, appellant requested reconsideration. She related that she believed that she had "more disability than after the first surgery."

On October 1, 2009 an Office medical adviser reviewed the evidence. He noted that the Office now utilized the sixth edition of the A.M.A., *Guides*⁴ for impairment determinations. The Office medical adviser found that Dr. Wilkinson's report was insufficient to modify the Office's prior right lower extremity determination.

¹ A.M.A., *Guides* (4th ed. 1993).

² On April 3, 2009 appellant had a Cybex test done by a physical therapist. The physical therapist measured range of motion and girth and performed isometric testing.

³ A.M.A., *Guides* (5th ed. 2001).

⁴ *Id.* (6th ed. 2009).

By decision dated October 28, 2009, the Office denied modification of its prior merit decision.

On appeal appellant maintains that she has more than seven percent impairment. She noted that she could no longer work overtime. Appellant questioned the distinction between disability and impairment and noted that a Cybex test showed that she had an additional impairment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,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, the Act 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, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

ANALYSIS

The Office accepted that on January 28, 2006 appellant sustained a right ACL tear and a benign neoplasm of connective and other soft tissue. She underwent surgery in 2006 to repair the ACL tear and on June 2007 she underwent a right knee arthroscopic excision of a ganglion cyst. On October 10, 2006 the Office granted appellant a schedule award for seven percent permanent impairment of the right lower extremity.

On October 30, 2007 appellant requested an increased schedule award. In 2008 and 2009 decisions, the Office determined that the evidence was insufficient to show that she had more than seven percent impairment of the right lower extremity.

On September 24, 2009 appellant requested reconsideration. She submitted a September 11, 2009 impairment evaluation from Dr. Wilkinson who noted that appellant continued to have right knee pain, swelling and instability. Dr. Wilkinson indicated that Cybex testing revealed a significant impairment of the knee but did not discuss the results of the testing or provide clinical findings on examination. Citing the fifth edition of the A.M.A., *Guides*, he concluded that appellant had 2 percent impairment due to pain, 12 percent impairment due to loss of muscle strength and 5 percent impairment due to atrophy. As of May 1, 2009, however,

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ 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).

any decision regarding a schedule award must be based on the sixth edition.⁹ Dr. Wilkinson did not utilize the appropriate edition of the A.M.A., *Guides*; consequently, his evaluation is of little probative value. Further, an Office medical adviser reviewed his report and noted that the report lacked sufficient basis to justify an increased schedule award. It is appellant's burden to submit medical evidence supporting the degree of permanent impairment.¹⁰ Before the A.M.A., *Guides* can be utilized, a description of the claimant's impairment must be obtained from a physician. The description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹¹ Dr. Wilkinson's report lacked clinical findings and is thus insufficient to support an increased impairment of the right lower extremity.¹²

On appeal appellant questions the distinction between disability and impairment. Under the Act, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹³ Disability is not synonymous with physical impairment, which may or may not result in incapacity to earn wages.¹⁴ The amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.¹⁵ The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c).

Appellant also notes that testing by a physical therapist revealed that she had an increased impairment. The sixth edition of the A.M.A., *Guides*, however, provides that impairment evaluations require medical knowledge and thus are mostly performed by physicians.¹⁶ Further, evaluations under the sixth edition are primarily diagnosis based and require identifying the impairment class for the diagnosed condition and then adjusting by grade modifiers based on functional history, physical examination and clinical studies.¹⁷ Appellant failed to submit such an impairment evaluation and thus failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has no more than seven percent permanent impairment of the right lower extremity.

⁹ *Id.*

¹⁰ See *D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

¹¹ *D.N.*, 59 ECAB 576 (2008); *Vanessa Young*, 55 ECAB 575 (2004).

¹² *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004).

¹³ *D.M.*, 59 ECAB 164 (2007); *Sean O'Connell*, 56 ECAB 195 (2004).

¹⁴ See *D.M.*, *supra* note 13.

¹⁵ *Ruben Franco*, 54 ECAB 496 (2003).

¹⁶ A.M.A., *Guides* 23.

¹⁷ *Id.* at 494-531.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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