



matter. He stated that total impairment under the sixth edition was less than that appellant would have received under the fifth edition.

### **FACTUAL HISTORY**

OWCP accepted that on January 12, 1982 appellant, then a 34-year-old letter carrier, sustained internal derangement and a patella fracture of the left knee. Appellant was unloading a truck when a lift gate on a five-ton vehicle dropped causing him to fall. He underwent left knee arthroscopic surgery on January 15, 1982.

On April 17, 2009 appellant filed a claim for a schedule award. In a January 21, 2009 medical report, Dr. Nicholas P. Diamond, an attending osteopath, found that appellant had reached maximum medical improvement. He determined that appellant had 30 percent impairment of the left lower extremity based on the fifth edition of the A.M.A., *Guides*.

By letter dated July 28, 2009, OWCP advised appellant that effective May 1, 2009 all permanent impairment determinations must be made in accordance with the sixth edition of the A.M.A., *Guides*.<sup>2</sup> It requested that he submit a medical report from an attending physician that included a finding that he had attained maximum medical improvement and provided a detailed description of the impairment and a schedule award rating according to this edition.

In another report dated January 21, 2009, Dr. Diamond obtained a history of the January 12, 1982 employment injuries and appellant's medical treatment, family and social background. His current left knee symptoms included pain, stiffness, buckling and instability. On physical examination, Dr. Diamond reported essentially normal findings with the exception of tenderness in the peripatellar and over the medial and lateral joint lines and lateral femoral condyle of the left knee, a positive Thessaly test and decreased muscle strength. He diagnosed post-traumatic left knee osteochondral compression fracture of the lateral femoral condyle with traumatic chondromalacia. Dr. Diamond advised that appellant was status post left knee arthroscopic surgery with debridement and femoral condyle shaving.

Utilizing the sixth edition of the A.M.A., *Guides*, Dr. Diamond determined that, under Table 16-3 on page 511, appellant's osteochondral fracture was impairment Class 1 with a default score of seven percent impairment for the left lower extremity. He assessed a grade 1 modifier for functional history under Table 16-6 on page 516. Dr. Diamond also assessed a grade 1 modifier for physical examination under Table 16-7 on page 517. For clinical studies, he did not assign a grade modifier under Table 16-8 on page 519 as the studies were used to confirm the diagnosis. Dr. Diamond found that the net adjustments compared to diagnosis class 1, was zero which represented a grade C modifier that resulted in seven percent impairment of the lower extremity. He concluded that appellant reached maximum medical improvement on January 21, 2009.

On December 10, 2010 Dr. Henry J. Magliato, OWCP's medical adviser, reviewed appellant's medical records, including Dr. Diamond's January 21, 2009 findings. He advised

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<sup>2</sup> On March 15, 2009 the Director issued FECA Bulletin No. 09-03 advising that the sixth edition of the A.M.A., *Guides* would be made applicable to rating impairment effective May 1, 2009.

that appellant reached maximum medical improvement on January 21, 2009. Dr. Magliato utilized the net adjustment formula and determined that the net adjustment was zero. He advised that the default value remained at seven percent impairment for the left lower extremity. Dr. Magliato concluded that Dr. Diamond correctly applied the sixth edition of the A.M.A., *Guides*.

In a January 15, 2010 decision, OWCP granted appellant a schedule award for seven percent impairment of the left lower extremity.

By letter dated January 21, 2010, appellant, through his attorney, requested a review of the written record.

In an April 5, 2010 decision, OWCP's hearing representative affirmed the January 15, 2010 decision, finding that the medical evidence established that appellant had no more than seven percent impairment of the left lower extremity.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>3</sup> and its implementing federal regulations,<sup>4</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members, functions and organs of the body. 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>5</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>6</sup> Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides*<sup>7</sup> as the appropriate edition for all awards issued after that date.<sup>8</sup>

The sixth edition requires identifying 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>9</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>10</sup>

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Ausbon N. Johnson*, 50 ECAB 304 (1999).

<sup>6</sup> *Supra* note 3.

<sup>7</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

<sup>9</sup> A.M.A., *Guides* 494-531.

<sup>10</sup> *Id.* at 521.

## ANALYSIS

OWCP accepted appellant's claim for internal derangement and patella fracture of the left knee. On January 15, 1982 appellant underwent left knee arthroscopy. On January 15, 2010 he received a schedule award for seven percent impairment of the left lower extremity. The Board finds that appellant did not meet his burden of proof to establish that he sustained greater impairment.

In an impairment evaluation dated January 21, 2009, Dr. Diamond, an attending physician, listed findings of post-traumatic left knee osteochondral compression fracture of the lateral femoral condyle with traumatic chondromalacia. He noted that appellant complained about pain, stiffness, buckling and instability of the left knee. On physical examination, Dr. Diamond listed essentially normal findings, noting tenderness in the peripatellar and over the medial and lateral joint lines and lateral femoral condyle of the left knee, a positive Thessaly test and decreased muscle strength. Applying Table 16-3 on page 511 of the sixth edition of the A.M.A., *Guides*, he found that appellant had class 1 impairment due to his osteochondral fracture. Dr. Diamond identified the default percentage for a class 1 impairment as seven percent. He then identified the grade modifier of 1 for GMFH under Table 16-6 on page 516. Dr. Diamond found a grade modifier of 1 for GMPE under Table 16-7 on page 517. He advised that there was no grade modifier for clinical studies under Table 16-8 on page 519 because the studies were used to confirm his diagnosis. Applying the net adjustment formula, (GMFH-CDX) + (GMPE-CDX), Dr. Diamond determined that appellant should receive no adjustment from the default grade. He concluded that appellant had seven percent permanent impairment of the left lower extremity.

Dr. Magliato, OWCP's medical adviser, reviewed Dr. Diamond's findings on December 10, 2010 and concurred with his determination that appellant had seven percent left lower extremity impairment under the sixth edition of the A.M.A., *Guides*. The Board finds that the evidence supports that he has no more than seven percent permanent impairment of the left lower extremity. There is no other medical evidence of record addressing the extent of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

Appellant asserts that he has a property right in a schedule award benefit under the fifth edition of the A.M.A. *Guides* and a protected property interest cannot be deprived without due process, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathews v. Eldridge*, 424 U.S. 319 (1976). These cases held only that a claimant who was a receipt of benefits (in *Goldberg* public assistance and in *Mathews* social security benefits) could not be terminated without due process. Appellant had received no schedule award under the fifth edition.

In *Harry D. Butler*,<sup>11</sup> the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.<sup>12</sup> On March 15, 2009 the Director

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<sup>11</sup> 43 ECAB 859 (1992).

<sup>12</sup> *Id.* at 866.

exercised authority to advise that as of May 1, 2009 all schedule award decisions of the Office should reflect use of the sixth edition of the A.M.A., *Guides*.<sup>13</sup> The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed.

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

### **CONCLUSION**

The Board finds that appellant has failed to establish that he has more than a seven percent impairment of the left lower extremity, for which he received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 5, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 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

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<sup>13</sup> FECA Bulletin No. 09-03 (March 15, 2009). FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).