

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

M.G., Appellant

and

**DEPARTMENT OF HEALTH & HUMAN
SERVICES, Rockville, MD, Employer**

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**Docket No. 10-1771
Issued: May 4, 2011**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 22, 2010 appellant, through his attorney, filed a timely appeal from a June 15, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

ISSUE

The issue is whether appellant met her burden of proof to establish impairment greater than the two percent previously awarded for her right lower extremity.

FACTUAL HISTORY

On June 23, 2008 appellant, then a 42-year-old management analyst, was injured when her foot got caught in a chair runner and she twisted her right knee. The Office accepted the claim for effusion of the right knee and authorized arthroscopic surgery which was performed on

¹ 5 U.S.C. §§ 8101-8193.

December 3, 2008. Appellant stopped work on June 23, 2008 and returned to full-time, regular duty on July 7, 2008.

Appellant came under the treatment of Dr. Brett J. Hampton, a Board-certified orthopedic surgeon, from June 24 to December 3, 2008, for the right knee twisting injury which occurred at work. Dr. Hampton noted her history was significant for right knee arthroscopy in 2006. He noted that plane, lateral and sunrise view x-rays revealed moderately severe tricompartmental degenerative joint disease of the right knee. Dr. Hampton diagnosed right knee twisting injury with contusion. A June 26, 2008 magnetic resonance imaging (MRI) scan of the right knee revealed a large joint effusion with soft tissue swelling and degenerative joint disease which was moderately severe. On December 3, 2008 Dr. Hampton performed right knee arthroscopy, partial lateral meniscectomy, chondroplasty, chondral picking of the medial femoral condyle and debridement of the medial synovial plica. He diagnosed grade 4 chondromalacia involving 50 percent of the femoral trochlea, multiple areas with unstable loose chondral flaps, multiple marginal osteophytes and diffuse grade 3 chondromalacia involving entire lateral tibial plateau. In reports dated December 11, 2008 and April 6, 2009, Dr. Hampton noted appellant was progressing well postoperatively with some lateral knee pain and swelling. He diagnosed right knee tricompartmental degenerative joint disease.

On November 4, 2009 appellant claimed a schedule award. She submitted an October 20, 2009 report from Dr. Donald I. Saltzman, a Board-certified orthopedic surgeon, who provided an impairment rating under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² Dr. Saltzman provided examination findings for the right knee that included: full range of motion; no atrophy; good strength; no medial or lateral knee instability; negative patellar grind; negative Lachman; negative anterior and posterior drawer signs; no varus or valgus instability and some tenderness in the medial femoral condylar area. He diagnosed right knee osteoarthritis, status post two arthroscopic surgeries, chondromalacia of the patella and medial femoral condyle and status post partial lateral meniscectomy. Dr. Saltzman noted appellant was at maximum medical improvement. He advised that, in accordance with the sixth edition of the A.M.A., *Guides*, she had zero percent impairment secondary to weakness, atrophy or instability on range of motion. Using the Knee Regional Grid, appellant fell into two categories. For the partial meniscectomy, she was a grade 2 which would yield two percent impairment of the right leg. Dr. Saltzman further noted that appellant had underlying degenerative arthritis of the patellofemoral joint and the tibiofemoral joint pursuant to the arthroscopic surgery and the patellofemoral changes were described as full-thickness defect involving part of the patella but her symptomology would be more in the moderate range or class 2. He noted that using various adjustment modifiers would yield 14 percent impairment of the right leg combined with the 2 percent impairment for the meniscectomy would yield a 16 percent right leg impairment.

In a May 7, 2010 report, Dr. Craig Uejo, Board-certified in occupational medicine and an Office medical consultant, reviewed Dr. Saltzman's report and opined that the objective findings did not support his impairment rating. He noted that there were two possible diagnoses under the Knee Regional Grid -- Lower Extremity Impairment, Table 16-3, page 509-11, of the A.M.A.,

² A.M.A., *Guides* (6th ed. 2008).

Guides. Dr. Uejo noted that page 499 of the A.M.A., *Guides* provides that, if more than one diagnosis in a region can be used, the one that provides the most clinically accurate and causally related impairment rating should be used. He noted that appellant was diagnosed with a partial lateral meniscectomy and patellofemoral chondromalacia with a described full-thickness articular cartilage defect. Dr. Saltzman noted that no specific joint space measurements were provided from the patellofemoral joint and that there was no description of joint space narrowing or full-thickness chondral defects. He noted that each diagnosis would be considered a class 1 rating due to the partial lateral meniscectomy and full-thickness chondral defect for the patellofemoral joint. The class 1 rating range for a partial lateral meniscectomy was one to three percent impairment and the patellofemoral full-thickness chondral defect under the arthritis section was one to five percent impairment. Dr. Uejo opined that impairment under the arthritis section yielded greater impairment and was appropriate.

The medical consultant noted that the most applicable rating for the chondromalacia patella or patellofemoral arthritis was a class 1 severity, not a class 2 as noted by Dr. Saltzman which he had based on her "symptomology." Within the regional grids, the class of severity was chosen based on the key facts outlined under each diagnostic class. In this case, a class 1 rating definition for patellofemoral arthritis was "full-thickness articular cartilage defect ... [or] ununited osteochondral fracture." Dr. Uejo noted that the more severe diagnostic classes for patellofemoral arthritis require joint space narrowing with exact measurement values based on radiographs which were not obtained by Dr. Saltzman. He noted that, using the section for arthritis in Table 16-3, page 511 of the A.M.A., *Guides*, the diagnosis of full-thickness chondral defect was a class 1 rating with a default score of three percent leg impairment. Dr. Uejo noted that Section 16.3a, Adjustment Grid-Functional History and Table 16-6, Functional History Adjustment -- Lower Extremities, page 516, appellant was a grade 1 modifier as her functional history was consistent with a mild problem. He noted that Dr. Saltzman did not provide significant detail regarding ongoing symptoms, including a limp or antalgic gait and prior records did not document such a problem. Dr. Uejo noted that, under the Functional History Adjustment Grid, without specific detail of gait problems the primary classification would be a grade zero but, given the lack of information and giving the benefit of the doubt, a grade 1 modifier would be reasonable. He noted that, pursuant to the Adjustment Grid -- Physical Examination, Table 16-7, appellant would be assigned a grade modifier of zero as the physical examination was normal. Dr. Uejo noted that, under the Adjustment Grid -- Clinical Studies, page 518, Table 16-8, Clinical Studies Adjustment -- Lower Extremities, page 519, appellant was assigned a grade modifier of 1 as the clinical studies show degenerative knee changes. He noted that the Diagnosis Class was one and, applying the net adjustment formula to the grade modifiers yielded -1 which move the default grade C to B, for which two percent lower extremity impairment is provided.

On June 15, 2010 appellant was granted a schedule award for two percent right leg impairment. The period of the award was October 20 to November 29, 2009.

LEGAL PRECEDENT

The schedule award provision of the Act³ and its implementing federal regulations⁴ 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.⁵ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.⁷

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁸ Under the sixth edition, for lower extremity impairments, the evaluator identifies 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).⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical consultant for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the Office medical consultant providing rationale for the percentage of impairment specified.¹¹

ANALYSIS

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ *Supra* note 2 at 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁹ *Id.* at 494-531.

¹⁰ *Id.* at 521.

¹¹ *See Federal* (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

above.¹² Appellant's accepted diagnosed conditions were effusion of the right knee joint and partial lateral meniscectomy.

Appellant submitted an October 20, 2009 report from Dr. Saltzman who noted that she sustained a 16 percent impairment of the right lower extremity under the A.M.A., *Guides*. Dr. Saltzman opined that she was a grade 2 for the diagnosed partial meniscectomy and would be entitled to two percent impairment of the lower extremity. He further noted that appellant was a class 2 with "various modifiers" for a 14 percent impairment of the right lower extremity pursuant to the A.M.A., *Guides* for the diagnoses of degenerative arthritis of the patellofemoral joint and tibiofemoral joint described as a full-thickness defect. Dr. Saltzman combined the 2 percent impairment for the partial meniscectomy with the 14 percent impairment for the patellofemoral arthritis for 16 percent impairment of the right leg. However, the Board notes that it was unclear how Dr. Saltzman determined that appellant was a class 2 rating for chondromalacia patella or patellofemoral arthritis pursuant to the A.M.A., *Guides*, as he failed to note specific findings including measurements for joint space narrowing pursuant to radiographs, rather, he merely noted class 2 was based on her "symptomology."

Table 16-3, page 511 of the A.M.A., *Guides* provides that patellofemoral arthritis with a full-thickness articular cartilage defect was a class 1 and that the more severe diagnostic classes for patellofemoral arthritis for class 2 require joint space narrowing of one millimeter interval or no cartilage interval pursuant to radiographs. In this instance, Dr. Saltzman did not provide these x-ray findings to support his determination. Similarly, the A.M.A., *Guides* provide that, if more than one diagnosis in a region can be used, the one that provides the most clinically accurate and causally related impairment rating should be used and only one condition for each region can be rated and the ratings for each diagnosis cannot be combined.¹³ Dr. Saltzman erroneously combined the 2 percent impairment for the right lower extremity for the partial meniscectomy with the 14 percent impairment for the patellofemoral arthritis for a 16 percent impairment of the right lower extremity. He failed to provide a detailed narrative describing his evaluation to explain how he applied grade modifiers for either of his diagnoses in accordance with the A.M.A., *Guides*. The Board finds that Dr. Saltzman did not properly follow the A.M.A., *Guides*, and an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed.¹⁴

Dr. Uejo discussed the relevant tables under the sixth edition of the A.M.A., *Guides*. He followed the assessment formula of the A.M.A., *Guides* and advised that, under the Knee Regional Grid in Chapter 16, Table 16-3, there were two possible diagnoses that applied, a partial lateral meniscectomy and patellofemoral chondromalacia with a described full-thickness articular cartilage defect. Dr. Uejo explained why both diagnoses could not be combined under the A.M.A., *Guides*, and opined that rating appellant's patellofemoral chondromalacia of the right knee under the section on arthritis in Table 16-3, for the diagnosis of full-thickness

¹² *Supra* notes 9, 10.

¹³ *Id.* at 499.

¹⁴ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantine*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

chondral defect was most appropriate as it would yield the most impairment. He noted that appellant had a class 1 diagnosis, with a default rating of three percent impairment, as no specific joint space measurements were provided for the patellofemoral joint or for the full-thickness chondral defects.¹⁵ Dr. Uejo also noted that she did not qualify for the more severe diagnostic classes for patellofemoral arthritis because no findings of joint space narrowing with exact measurements based on radiographs were provided.

After determining the impairment class and default grade, Dr. Uejo determined whether there were any applicable grade adjustments for so-called nonkey factors or modifiers. These include adjustments for GMFH, GMPE and GMCS. The grade modifiers are used in the net adjustment formula to calculate a net adjustment.¹⁶ The final impairment grade is determined by adjusting the grade up or down from the default value C by the calculated net adjustment. Dr. Uejo identified two modifiers; one based on the GMFH and the other based on GMCS. For the functional history, he assigned a grade modifier 1 based on a history of a mild problem. Dr. Uejo noted that Dr. Saltzman did not provide significant detail regarding ongoing symptoms, limp or antalgic gait but noted that, giving the benefit of the doubt, a grade 1 modifier was reasonable.¹⁷ He further determined that appellant was not entitled to an additional impairment for physical examination as the examination was normal. Dr. Uejo also found a grade 1 modifier based on her clinical studies which showed degenerative changes in the right knee.¹⁸ Applying the net adjustment formula resulted in a modifier of -1, which resulted in a grade adjustment from C to B.¹⁹ The corresponding lower extremity impairment for a class 1, grade B full-thickness articular cartilage defect is two percent.²⁰

The Board finds that Dr. Uejo properly applied the A.M.A., *Guides* to rate impairment to appellant's right knee. Dr. Uejo reviewed the medical evidence and fully explained how he determined appellant's rating and why the rating of Dr. Saltzman was not in conformance with the A.M.A., *Guides*.

On appeal, counsel argued that the sixth edition of the A.M.A., *Guides* does not adequately allow for the consideration of impairment based on all the conditions impairing appellant's lower extremity as dictated by Office procedure. The Board notes that the Office has explicitly adopted the standards of the sixth edition of the A.M.A., *Guides*, effective May 1, 2009, for evaluating permanent impairment.²¹ As noted, Dr. Uejo clearly explained his rating under the sixth edition of the A.M.A., *Guides*.

¹⁵ A.M.A., *Guides* at 511, Table 16-3.

¹⁶ *Supra* note 10.

¹⁷ *Id.* at 516, Table 16-6.

¹⁸ *Id.* at 519, Table 16-8.

¹⁹ Using the formula at page 521 of the A.M.A., *Guides*, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) results in the following: (1-1) + (0-1) + (1-1) = -1.

²⁰ *Id.* at 511, Table 16-3.

²¹ *Supra* note 7.

CONCLUSION

The Board finds that appellant has no more than two percent right lower extremity impairment for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board