

¹ 5 U.S.C. § 8101 *et seq.*

left knee post-traumatic arthritis, Baker's cyst aggravation and strain and granted a schedule award for two-percent permanent impairment of the left lower extremity. Appellant subsequently underwent total left knee replacement on January 13, 2003. By decision dated November 4, 2004, OWCP granted a schedule award for an additional 48 percent permanent impairment of the left lower extremity.²

On July 6, 2010 Dr. Gaylon B. Seay, a Board-certified orthopedic surgeon, performed a total left knee revision of the tibial component. He released appellant to modified duty effective August 30, 2010.

Appellant filed a claim for an additional schedule award on September 6, 2010. In a September 28, 2010 report, Dr. Gerald L. Hill, an occupational physician, related that appellant sustained an injury on January 3, 1992 and thereafter underwent multiple procedures on his left knee. He added that appellant was presently restored to full-time duty, reassigned to a driving route and generally "doing well." On examination of the left knee, Dr. Hill observed an 11-inch linear anterior scar, full range of motion (ROM) on extension and flexion up to 105 degrees and insignificant tenderness and effusion.³ Applying Table 16-3 (Knee Regional Grid) on page 511 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ (hereinafter A.M.A., *Guides*), he assigned an impairment class Diagnosed Condition (CDX) of 2 with a default grade of C or a 25 percent impairment rating, as the knee exhibited good position, stability and functionality.⁵ Citing appellant's capacity to perform his normal work and the knee's range of flexion, Dr. Hill noted grade modifier values of one for Functional History (GMFH) and one for Physical Examination (GMPE). He found the grade modifier for clinical studies (GMCS) inapplicable. Using the net adjustment formula of GMFH - CDX + GMPE - CDX or $(1 - 2) + (1 - 2)$, Dr. Hill calculated a net adjustment of -2. He concluded that appellant had a class 2, grade A impairment of the left lower extremity, which amounted to a 21 percent impairment rating. Dr. Hill listed September 3, 2010 as the date of maximum medical improvement.

On November 1, 2010 OWCP's medical adviser reviewed Dr. Hill's September 28, 2010 report and agreed with Dr. Hill that appellant had a 21 percent impairment rating for the left lower extremity. Since appellant received prior schedule awards totaling 50 percent for a left knee condition, he was not entitled to an additional award.

² Appellant elected to receive the award in a lump-sum settlement.

³ Dr. Hill indicated that appellant experienced right knee symptoms related to a military injury. This condition is not at issue before the Board.

⁴ A.M.A., *Guides* (6th ed. 2008).

⁵ Dr. Hill pointed out that a specific diagnosis of total knee revision of the tibial component was not included in the regional grid. Alternatively, he applied the grading scheme associated with a diagnosis of total knee replacement to determine the impairment rating.

By decision dated November 10, 2010, OWCP denied appellant's claim for a schedule award, finding that the medical evidence did not establish that he sustained additional impairment above 50 percent.⁶

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.⁷ However, FECA 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 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.⁸

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF). For lower extremity impairments, the evaluator identifies the impairment class for the CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS. The net adjustment formula is GMFH - CDX + GMPE - CDX + GMCS - CDX. Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.⁹

A claim for an increased schedule award may be based on new exposure or, absent any new exposure to employment factors, medical evidence indicating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.¹⁰ In determining entitlement to a schedule award, preexisting impairment to the scheduled member should be included. 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.¹¹

⁶ OWCP originally issued its decision on November 2, 2010.

⁷ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁸ *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

⁹ *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁰ *P.T.*, Docket No. 10-666 (issued November 24, 2010); *James R. Hentz*, 56 ECAB 573 (2005).

¹¹ *Carol A. Smart*, 57 ECAB 340 (2006). See also 11 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(a)(2) (March 2011).

ANALYSIS

Appellant received earlier schedule awards that totaled 50 percent permanent impairment of the left lower extremity. Following a July 6, 2010 left knee procedure, he filed a claim for an additional schedule award. OWCP received a September 28, 2010 report from Dr. Hill, who assigned a 21 percent impairment rating. OWCP's medical adviser reviewed and adopted Dr. Hill's calculations. After subtracting 50 percent, the percentage already paid, from 21 percent, he concluded that appellant was not entitled to an additional schedule award.

The Board finds that Dr. Hill applied the appropriate tables and grading schemes of the A.M.A., *Guides*, in determining that appellant currently has 21 percent impairment of the left leg. The A.M.A., *Guides* classifies the lower extremity impairment by diagnosis, which is then adjusted by grade modifiers.¹² In this case, Dr. Hill based his impairment analysis on Table 16-3 (Knee Regional Grid). As the grid did not specifically provide for a diagnosis of total knee revision, he identified total knee replacement as a similar, listed condition to be used as a guide to the impairment calculation.¹³ Dr. Hill initially assigned a CDX of two with a default grade of C as the left knee demonstrated good position, stability and functionality. Thereafter, he determined that modification of the default grade was proper in light of appellant's postoperative history and physical examination. As appellant was restored to full-time duty and doing well overall, Dr. Hill assessed a value of one for GMFH. Furthermore, since the left knee demonstrated 105 degree flexion, he assessed a value of 1 for GMPE. Using the net adjustment formula of GMFH - CDX + GMPE - CDX or $(1 - 2) + (1 - 2)$, Dr. Hill calculated an adjustment of -2. He therefore concluded that appellant had a class 2, grade A impairment of the left lower extremity, which was equivalent to a 21 percent impairment rating. Dr. Hill applied the A.M.A., *Guides* and clearly explained how he determined appellant's impairment rating. Appellant has not submitted any medical evidence in conformance with the A.M.A., *Guides* supporting that he has any greater impairment of his left leg. OWCP's medical adviser concurred with Dr. Hill's rating.

On appeal, asserts that appellant is entitled to a separate award for 21 percent permanent impairment. As noted, where a claimant has a preexisting impairment to the scheduled member at issue, such impairment must be included in calculating percentage of loss unless it was work related, in which case the percentage already paid is deducted.¹⁴ The record shows that appellant received schedule awards for a combined 50 percent permanent impairment of the left lower extremity. After concurring with Dr. Hill's rating, OWCP's medical adviser indicated that the impairment determined by Dr. Hill was duplicative of impairment for which appellant previously received a schedule award. Because appellant had already been awarded 50 percent impairment

¹² *R.V., supra* note 9.

¹³ A.M.A., *Guides, supra* note 4 at 499.

¹⁴ See *supra* note 11. FECA and its implementing regulations provide for the reduction of compensation for subsequent injury to the same scheduled member. Benefits payable under 5 U.S.C. § 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment. 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).

of the left leg, OWCP properly offset the latest rating of 21 percent against his prior schedule awards and found that he had no additional compensable impairment.

The Board notes that appellant submitted new evidence to OWCP after issuance of the November 10, 2010 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁵ Appellant may request an increased schedule award based on evidence of a new exposure or progression of an employment-related condition resulting in further impairment.

CONCLUSION

The Board finds that appellant did not sustain more than a 50 percent permanent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 2011
Washington, DC

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

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

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

¹⁵ 20 C.F.R. § 501.2(c).