

FACTUAL HISTORY

On February 13, 1990 appellant, then a 34-year-old deputy marshal, sustained injury to his right knee while jogging in preparation for a fitness examination. OWCP accepted the claim for right knee dislocation.²

By decision dated March 7, 2002, OWCP granted appellant a schedule award for a 10 percent impairment of the right lower extremity.

On August 12, 2004 appellant filed a traumatic injury claim alleging that on August 11, 2004 he injured his left knee when his heel became caught in the ground and he twisted his knee. OWCP accepted the claim for left knee lateral torn meniscus.³

On January 17, 2005 appellant reinjured his right knee while jogging when he stepped in a hole and fell on his right side. OWCP accepted the claim for right knee meniscus lateral cartilage tear, right leg osteoarthritis and a displaced lumbar intervertebral disc.⁴

On December 5, 2007 appellant filed a traumatic injury claim alleging that on December 3, 2007 he injured his left knee at the gym while doing leg extensions. OWCP accepted the claim for left knee lateral collateral ligament sprain, left medial meniscus tear and left lower leg localized primary osteoarthritis.

By letter dated March 16, 2009, OWCP informed appellant that it was combining claim number xxxxxx072, claim number xxxxxx417 and claim number xxxxxx087 with claim number xxxxxx192, which was designated the master file number would be xxxxxx192.

On December 14, 2012 appellant filed a claim for a schedule award.

By letter dated December 28, 2012, OWCP informed appellant that the following conditions had been accepted under his claim: right knee dislocation, bilateral lateral meniscus tears of the knees; bilateral leg osteoarthritis; lumbar intervertebral disc displacement without myelopathy and a left knee lateral collateral ligament sprain. It noted that no medical evidence had been submitted in support of his claim. OWCP advised appellant regarding the medical evidence required to support his claim and noted that any impairment rating should be made using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

² This was assigned claim number xxxxxx192.

³ This was assigned claim number xxxxxx087.

⁴ This was assigned claim number xxxxxx072. Under this claim appellant has previously filed appeals with the Board. By decision dated October 2, 2012, the Board affirmed OWCP's decisions dated November 9 and December 5, 2011 denying his request for a merit review of the denial of his request for an additional schedule award. See Docket No. 12-683(issued October 2, 2012). On June 4, 2013 the Board affirmed OWCP's December 11, 2012 decision denying reconsideration. See Docket No. 13-531 (issued June 19, 2013).

In a January 17, 2013 report, Dr. M. Stephen Wilson, an examining physician, reviewed appellant's employment and medical histories. A physical examination revealed restricted flexion of 115 degrees with full extension in the right knee. There was weakness on resistance with flexion and extension and tenderness over the right knee medial joint line on palpation. Patellofemoral crepitation was palpable throughout active and passive range of motion for both the right and left knees. Range of motion for the left knee was restricted to -3 degrees to full flexion and 95 degrees flexion. Tenderness was felt on palpation over the left knee medial and lateral joint lines. The physician reported weakness against resistance in the left knee with both resisted extension and flexion.

In calculating impairment, Dr. Wilson referred to the A.M.A., *Guides* (6th ed. 2009). Under Table 16-3, *Knee Regional Grid, Lower Extremity Impairments*, appellant had class 3 due to permanent anatomical abnormalities and loss of function of the right knee.⁵ Dr. Wilson noted class 3 (severe osteoarthritis) impairment had a default value of 30 percent.⁶ He referred to Table 16-6, *Functional History Adjustment, Lower Extremities* and used a grade modifier 2.⁷ Dr. Wilson referred to Table 16-7, *Physical Examination Adjustment, Lower Extremities* and selected a grade modifier 2.⁸ He referred to Table 16-8, *Clinical Studies Adjustment, Lower Extremities* and utilized a grade modifier 3.⁹ Dr. Wilson utilized the net adjustment formula to determine that appellant had a net adjustment of -2, which kept the rating as A. This resulted in 26 percent impairment of the right lower extremity.

As to appellant's left lower extremity impairment, under Table 16-3, *Knee Regional Grid, Lower Extremity Impairments*, he had class 3 due to permanent anatomical abnormalities and loss of function of the left knee.¹⁰ Dr. Wilson noted a class 3 (severe osteoarthritis) impairment had a default value of 30 percent.¹¹ He referred to Table 16-6, *Functional History Adjustment, Lower Extremities* and used a grade modifier 2.¹² Dr. Wilson referred to Table 16-7, *Physical Examination Adjustment, Lower Extremities* and selected a grade modifier 2.¹³ He referred to Table 16-8, *Clinical Studies Adjustment, Lower Extremities* and utilized a grade modifier 3.¹⁴ Dr. Wilson utilized the net adjustment formula to determine that appellant had a

⁵ A.M.A., *Guides* 510.

⁶ *Id.* at 511.

⁷ *Id.* at 516.

⁸ *Id.* at 517.

⁹ *Id.* at 519.

¹⁰ *Id.* at 510.

¹¹ *Id.* at 511.

¹² *Id.* at 516.

¹³ *Id.* at 517.

¹⁴ *Id.* at 519.

net adjustment of -2, which kept the rating as A. This resulted in 26 percent impairment of the left lower extremity.

On February 12, 2013 OWCP referred Dr. Wilson's report to Dr. H. Mobley, an OWCP medical adviser. In a February 21, 2013 report, Dr. Mobley applied the A.M.A., *Guides* to Dr. Wilson's examination findings and concurred with the rating of 26 percent impairment each lower extremity. He noted that while Dr. Wilson did not report knee cartilage intervals that the record supported his evaluation. Dr. Mobley determined that appellant reached maximum medical improvement on January 17, 2013, the date of Dr. Wilson's examination. As appellant had previously received a schedule award for 10 percent impairment of his right leg, he had an additional 16 percent impairment to that extremity.

By decision dated February 26, 2013, OWCP granted appellant schedule awards for a 26 percent left leg impairment and 16 percent right leg impairment. The period of the awards was for 120.96 weeks and ran from January 17, 2013 through May 13, 2015.

LEGAL PRECEDENT

Under section 8107 of FECA¹⁵ and section 10.404 of the implementing federal regulations,¹⁶ schedule awards are payable for permanent impairment of specified body members, functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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.¹⁷

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).¹⁸ Under the sixth edition, 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).¹⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).²⁰

¹⁵ 5 U.S.C. § 8107.

¹⁶ 20 C.F.R. § 10.404.

¹⁷ *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

¹⁸ A.M.A., *Guides* (6th ed., 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

¹⁹ A.M.A., *Guides* (6th ed., 2009), pp. 383-419.

²⁰ *Id.* at page 411.

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.²¹

ANALYSIS

After combining the claims, OWCP accepted the conditions of right knee dislocation, bilateral knee lateral meniscus tears, bilateral leg localized primary osteoarthritis, left knee sprain and displacement of the lumbar intervertebral disc. Appellant previously received a schedule award for 10 percent right lower impairment and he requested a further schedule award for both legs. OWCP granted an additional 16 percent impairment to the right lower extremity, for a total award of 26 percent right lower extremity impairment and a 26 percent impairment of the left lower extremity.

On January 17, 2013 Dr. Wilson determined under the sixth edition of the A.M.A., *Guides*, that appellant had 26 percent impairment to the right lower extremity and 26 percent impairment under the left lower extremity. Under Table 16-3 appellant was class 3 for severe osteoarthritis impairment for both legs.²² Dr. Wilson concluded that appellant was grade modifier 2 for functional history,²³ grade modifier 2 for physical examination²⁴ and grade modifier 2 for clinical studies.²⁵ He applied the net adjustment formula, (GMFH - CDX) (2-3) + (GMPE - CDX) (2-3) + (GMCS - CDX) (3-3) and found a net adjustment of -2 and a grade change to A. Dr. Wilson concluded that this represented 26 percent impairment of the right lower extremity and a 26 percent impairment of the left lower extremity.

The medical adviser reviewed Dr. Wilson's findings and, in a February 21, 2013 report, concurred with Dr. Wilson's impairment rating. As appellant previously received a schedule award of 10 percent for the right lower extremity, the medical adviser stated that he was entitled to an additional 16 percent for the right lower extremity. The Board finds that both the reports of both the medical adviser and Dr. Wilson are consistent with the A.M.A., *Guides*. Both Dr. Wilson and the medical adviser agreed that the date of maximum medical improvement was January 17, 2013.

The Board finds that the weight of the medical evidence establishes that appellant has no more than 26 percent permanent impairment of the right lower extremity and a 26 percent left lower extremity impairment under the sixth edition of the A.M.A., *Guides*. As OWCP

²¹ See C.K., Docket No. 09-2371 (issued August 18, 2010). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). Frantz Ghassan, 57 ECAB 349 (2006).

²² A.M.A., *Guides* 511.

²³ *Id.* at 516, Table 16-6.

²⁴ *Id.* at 517, Table 16-7.

²⁵ *Id.* at 519, Table 16-8.

previously awarded him a 10 percent right lower extremity impairment, the medical adviser properly subtracted that amount from 26 percent to find that he was entitled to an additional 16 percent right lower extremity impairment.

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 no greater than a 26 percent left lower extremity impairment and 26 percent right lower extremity impairment, for which he received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 26, 2013 is affirmed.

Issued: March 12, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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