

FACTUAL HISTORY

Appellant, a 33-year-old letter carrier, injured her right knee on April 27, 2006 when a coworker struck her leg with a postcon. She filed a claim for benefits under file number xxxxxx521, which OWCP accepted for right leg contusion.

In the current claim, on December 16, 2009 appellant filed a claim for occupational disease (Form CA-2), alleging that she developed a right knee condition causally related to employment factors. He claimed that, after his 2006 injury, the pain never stopped. OWCP requested further information from appellant by letter dated January 19, 2010.

A report dated November 25, 2009, received by OWCP on March 1, 2010 reflected that appellant had undergone a magnetic resonance imaging (MRI) scan which showed a torn right lateral meniscus.

By decision dated April 8, 2010, OWCP denied appellant's occupational disease claim, finding that she had failed to establish fact of injury. It found the factual information failed to provide a clear and detailed description of work factors and suggested her condition was related to her prior accepted injury, not due to new work factors. OWCP noted that appellant had filed a recurrence claim which had not yet been finally adjudicated.

On May 6, 2010 appellant, through counsel, requested an oral hearing, which was held on October 28, 2010.

In a June 30, 2010 report, Dr. Robert L. Hecht, Board-certified in physical medicine and rehabilitation, advised that he had initially treated appellant on May 2, 2006 for an April 27, 2016 work injury. He reported that when he examined her again on January 19, 2010 she had begun to develop pain in her back because she had been favoring both knees. Dr. Hecht related that the strenuous activities in which appellant engaged at work had aggravated the pain in her back and right knee. He advised that appellant had been involved in a nonwork-related motor vehicle accident in 1995, in which she injured her lower back and right knee but that these problems had resolved prior to the April 27, 2006 work incident. Dr. Hecht noted that the November 25, 2009 right knee MRI scan showed a lateral meniscal tear and that the left knee MRI scan taken on December 14, 2009 was unremarkable.

Dr. Hecht opined that appellant had sustained an initial injury at work to her right knee and that, due to increased responsibilities, strenuous work, and favoring her right knee, she had developed consequential injuries to her left knee and lower back. He opined that she had been unable to work since December 16, 2009 because of her back and knee injuries.

By decision dated January 26, 2011, an OWCP hearing representative vacated the April 8, 2010 decision. She found that, although the medical evidence appellant submitted was insufficient to meet her burden of proof to establish the occupational disease claim, the evidence raised an uncontroverted inference between the claimed conditions and the identified employment factors sufficient to require OWCP to further develop the medical evidence. OWCP's hearing representative found that Dr. Hecht's June 30, 2010 report contained a sufficiently accurate description of her work duties to support his opinion that appellant had

developed a back strain and knee conditions as the result of her work duties and favoring her right leg. She, however, found that his report did not provide sufficient reasoning to support his opinion that appellant sustained derangement of both knees.

OWCP's hearing representative advised that, while the November 25, 2009 right knee MRI scan showed a lateral meniscus tear, it was unclear as to whether this was due to the April 2006 work incident, the work she performed after she returned to work, or a combination of both. She further determined that because the instant case and the traumatic claim under file number xxxxxx521 were so closely related, the cases should be consolidated. OWCP's hearing representative remanded the case for preparation of a new statement of accepted facts, which should include details of how both injuries occurred and a description of appellant's work duties, and referral to a second opinion examiner, to determine whether her work duties as a letter carrier caused an injury to her back or her left knee by way of direct cause, aggravation, or acceleration and to determine what role, if any, the right knee injury played in the development of any further conditions. She also directed OWCP to determine whether the right knee meniscus tear was caused by either the April 26, 2006 traumatic work incident or by the work duties that she performed after she returned to work, or by a combination of both. The hearing representative instructed OWCP to issue a *de novo* decision following the development of the medical evidence.

OWCP referred appellant to Dr. David Lotman, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated March 1, 2011, Dr. Lotman related that appellant had complaints of spasms in the right knee, deep to the patella, which were provoked by walking. He also noted that she experienced swelling of the knee at night and locking of the knee while standing. Dr. Lotman reviewed appellant's medical records, noting that meniscal tear had been diagnosed based upon a November 25, 2009 MRI scan. He concluded that his diagnosis of appellant's condition was resolved contusion of the right knee. In addition, as to whether work duties as a letter carrier directly caused, aggravated, or accelerated an injury to her back and/or her left knee, Dr. Lotman replied that her work duties were consistent with the development of back and knee symptomatology. He further opined that appellant's right knee injury caused a temporary aggravation of her preexisting left knee and back symptomatology.

On May 23, 2011 OWCP accepted the claim for contusion of the right knee. Appellant filed claims for wage-loss compensation (Form CA-7).

By decisions dated September 13 and October 21, 2011, OWCP denied appellant's claims for periods of wage-loss compensation.

By letter dated September 20, 2011, appellant's counsel requested an oral hearing.

By decision dated December 7, 2011, an OWCP hearing representative set aside the September 13 and October 21, 2011 decisions because Dr. Lotman had failed to identify a firm diagnosis in relation to the low back and knee problems and had failed to identify a period of disability, if any, stemming from any accepted conditions. He instructed the district office to further develop the medical evidence by referring appellant to a new second opinion specialist to determine the nature of the low back and bilateral knee conditions and the duration of any work-

related disability. The hearing representative directed the district office to issue a *de novo* decision following the receipt of the specialist's report and any other case development.

In order to determine whether appellant sustained a right or left knee condition or lower back condition causally related to factors of her employment, OWCP referred her to Dr. Richard Steinfeld, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated January 19, 2012, Dr. Steinfeld diagnosed a torn right lateral meniscus. He advised that the diagnosed condition, a lateral meniscus tear, was most likely medically connected to her work injury by direct cause. Dr. Steinfeld stated that appellant had denied any prior injury or difficulty with her right knee prior to being struck by the mail cart and he therefore opined that this sort of traumatic incident could certainly result in a meniscus tear. He advised that it did not appear that appellant had sustained any other knee injury, at least according to the subjective history she provided during his evaluation. Dr. Steinfeld further advised that she did not believe that her lower back issue was related to her knee issue.²

On March 2, 2012 OWCP accepted the claim for torn right lateral meniscus of the right knee.

In a June 18, 2013 report, Dr. David Weiss, an osteopath, found that appellant had four percent right lower extremity impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). He noted that, under Table 16-3, Knee Regional Grid, Lower Extremity Impairments, at page 509 of the A.M.A., *Guides*,³ appellant's torn right lateral meniscus condition yielded a class 1 rating. Using the Adjustment Grid, Functional History, at Table 16-6, page 516 of the A.M.A., *Guides*,⁴ Dr. Weiss found that appellant had a grade modifier of 3 for functional history based on her score of 62 for a daily activities lower limb questionnaire. However, he found this to have no application to appellant's rating and gave no grade modifier for functional history. Dr. Weiss assigned a grade modifier of 1 for physical examination, for a mild problem, with minimal palpatory findings, consistently documented, without observed abnormalities, pursuant to Table 16-7, page 517 of the A.M.A., *Guides*.⁵ He found no grade modifier for clinical studies. Using the diagnosis-based impairment, Dr. Weiss found that appellant had a class 1 rating for right medial meniscus tear, which yielded a default right lower extremity impairment of two

² The Board notes that by decision dated February 13, 2012, an OWCP hearing representative remanded for the district office to ask Dr. Steinfeld for a supplemental report to clarify his opinion of causal relationship of the diagnosed conditions that he considered to be a result of the employment. She instructed the district office to ask Dr. Steinfeld to specifically identify those conditions that had already been accepted as work related and to provide a rationalized medical opinion regarding disability for work for the claimed periods from 2009 to 2011, as being causally related to or a result of the employment conditions. While Dr. Steinfeld did submit a February 28, 2012 supplemental report addressing these questions, the Board notes that the issue of whether appellant sustained any periods of disability stemming from his accepted conditions is not contested on appeal. In addition, OWCP only accepted a right knee condition and did not accept a lower back or left knee condition.

³ A.M.A., *Guides* 509.

⁴ *Id.* at 516.

⁵ *Id.* at 517.

percent.⁶ Adjusting the grade by a grade modifier of 1 for physical examination, did not change the default rating which remained at two percent.

On August 13, 2013 appellant filed a claim for a schedule award (Form CA-7) based on partial loss of use of her right lower extremity.

In a September 24, 2013 report, an OWCP medical adviser reviewed the record, including Dr. Weiss' report, and found that appellant had no ratable impairment of the right lower extremity pursuant to the sixth edition of the A.M.A., *Guides*. The medical adviser explained that he gave most weight to Dr. Lotman's report of March 2011.

By decision dated September 27, 2013, OWCP denied appellant's claim for a schedule award, finding that she had not established any permanent impairment causally related to her accepted torn right meniscus condition.

By letter dated October 3, 2013, appellant's attorney requested a hearing.

By decision dated January 10, 2014, an OWCP hearing representative set aside the September 27, 2013 decision, finding that the September 24, 2013 report from OWCP's medical adviser was not sufficiently rationalized as to constitute the weight of the medical evidence. She further found that the district medical adviser did not address the July 18, 2013 report of Dr. Weiss, which reflected results on examination and provided four percent permanent impairment under the A.M.A., *Guides*. The hearing representative therefore remanded the case to the district office and directed that it refer appellant to a Board-certified orthopedist for a second opinion permanent impairment evaluation on whether appellant had any permanent impairment of the right lower extremity under the A.M.A., *Guides*.

OWCP referred appellant to Dr. Jonathan D. Black, Board-certified in orthopedic surgery. In a February 18, 2014 report, Dr. Black found that appellant had no ratable impairment. He opined that, although the statement of accepted facts mentioned that she had a lateral meniscus tear, this apparently was never significant enough for her treating physicians to require surgical intervention. Dr. Black noted that appellant had no signs and symptoms of ongoing problems with the lateral meniscus on physical examination. He further advised that she was managing any symptoms she continued to have with anti-inflammatory medication and was able to work her normal duties in a school cafeteria. Based on these factors, Dr. Black accorded her zero percent impairment rating for the right lower extremity.

In a February 28, 2014 report, an OWCP medical adviser reviewed Dr. Black's report and found that appellant had no ratable impairment of the right lower extremity pursuant to the sixth edition of the A.M.A., *Guides*.

⁶ Dr. Weiss also accorded a two percent right lower extremity impairment rating for right and left sensory deficits at L4. However, as OWCP has not accepted a lower back condition, it properly denied a schedule award based on these ratings.

By decision dated March 3, 2014, OWCP denied appellant's claim for a schedule award, finding that she had not sustained any permanent impairment causally related to her accepted torn right lateral meniscus condition.

By letter dated March 10, 2014, appellant's counsel requested an oral hearing which was held on June 9, 2014.

By decision dated July 28, 2014, an OWCP hearing representative affirmed the March 3, 2014 decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁷ and its implementing regulations⁸ 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, 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.⁹ Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009). The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to her employment.¹⁰

ANALYSIS

On appeal counsel contends that there is a conflict in the medical evidence between the opinions of Dr. Black and Dr. Weiss regarding whether appellant has impairment stemming from her accepted right lateral meniscus tear condition.¹¹ The Board finds that the case is not in posture for decision.

In the present case, OWCP found that appellant did not have a ratable impairment for the right lower extremity impairment based on the opinion of Dr. Black, OWCP's referral physician. The Board finds that OWCP improperly relied on Dr. Black's opinion, as he failed to provide an impairment rating in conformance with the applicable tables and protocols of the A.M.A.,

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁹ *Id.*

¹⁰ *Veronica Williams*, 56 ECAB 367, 370 (2005).

¹¹ Counsel further contends that appellant is entitled to a total four percent impairment rating in light of Dr. Weiss' two percent right lower extremity impairment rating for right and left sensory deficits at L4. As noted above, however, OWCP has not accepted a lower back condition and it properly denied a schedule award based on these ratings.

Guides. Dr. Black made minimal findings in his report. He asserted that, although the statement of accepted facts mentioned that appellant had a lateral meniscus tear, this was insufficient for her treating physicians to require surgical intervention and opined that she had no signs and symptoms of ongoing problems with the lateral meniscus tear on physical examination.¹² Dr. Black further advised that appellant was managing any continued symptoms with anti-inflammatory medication and was able to work in a school cafeteria. Due to this lack of clarity, the Board is unable to render an informed judgment as to whether appellant had any permanent impairment due to the accepted condition. While the claimant has the burden to establish permanent impairment, once OWCP undertakes the development of the evidence, it has an obligation to provide a valid opinion.¹³

Accordingly, the Board will set aside OWCP's July 28, 2014 decision and remand to OWCP for further development of the medical evidence and to determine whether appellant has any permanent impairment of the right lower extremity due to the accepted right torn medical meniscus. The opinion should clearly indicate the specific background and protocols of the A.M.A., *Guides* upon which the opinion is based. After such further development of the record as it deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision. The case is remanded for further development of the medical evidence.

¹² The Board notes that the A.M.A., *Guides* 509, Table 16-3, allow a rating between one and three percent for a lateral partial meniscal tear, independent of a meniscectomy or meniscal repair.

¹³ *Horace L. Fuller*, 53 ECAB 775 (2002).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2014 decision of the Office of Workers' Compensation Programs be set aside and the case is remanded to OWCP for further action consistent with this decision of the Board.¹⁴

Issued: May 20, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁴ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.