



arthroscopic knee surgeries and ultimately underwent bilateral total knee replacements on October 14, 2002.

The record reflects that on February 18, 1999 appellant was granted a schedule award for a 28 percent impairment of her right foot and a 28 percent impairment of her left foot pursuant to an August 15, 1997 claim that had been accepted for bilateral foot aggravation of neuroma.<sup>1</sup>

In a June 10, 2003 report, Dr. Dennis J. Wyman, a treating physician, provided a 51 percent whole person impairment rating. He gave a history of appellant's injury and a brief description of his examination of appellant's lower extremity. Dr. Wyman indicated that both lower extremities revealed anterior vertical, well-healed surgical incisions; that the motor functions of the extremities was equal and normal; that range of motion of the right extremity was diminished, with a 15 degree loss of full extension and flexion of 100 degrees; that there was no loss of extension in the left knee and flexion was 105 degrees; that there was no varus or valgus deformity or any instability of the joint; and that pain was in the mild category. Referring to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001), he estimated points attributable to knee replacement results according to Table 17-35.<sup>2</sup> He allocated 45 points for right knee pain and 20 points range of motion, for a total of 65 points. Subtracting 10 points for loss of extension and 20 points for loss of flexion, resulted in a total of 35 points for the right knee. He allocated 45 points for left knee pain and 21 points range of motion, for a total of 66 points for the left knee. Subtracting 20 points for loss of flexion resulted in a total of 46 points for the left knee, Dr. Wyman then converted his findings to a whole person impairment rating, 30 percent for each knee, and, using the combined values table, opined that appellant had a 51 percent impairment of the whole person.

Based upon figures provided by Dr. Wyman in his June 10, 2003 report, a district medical adviser determined on a July 26, 2003 schedule award worksheet that appellant had a 75 percent impairment of the left knee and a 75 percent impairment of the right knee.

On August 19, 2003 appellant was granted a schedule award for a 75 percent impairment of her right knee and a 75 percent impairment of her left knee.

Appellant requested and the Office agreed to a lump-sum payment in the amount of \$187,000.00 on December 19, 2003. Upon review, the district medical adviser indicated that the impairment ratings might be faulty and recommended that a second opinion examination be scheduled. The Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. D.C. MacKay, a Board-certified orthopedic surgeon, for a rating of permanent loss of use of both lower extremities.

In a report dated June 8, 2004, Dr. MacKay provided a history of appellant's condition and a detailed account of his physical examination of appellant. He stated that her right knee was neurologically intact and stable in all directions; that range of motion was five to 110 degrees; and that the calf circumference was 44 centimeter (cm). Dr. MacKay stated that her left

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<sup>1</sup> Case numbers 120172951 and 120172952.

<sup>2</sup> A.M.A., *Guides* 549, Table 17-35.

knee was neurologically intact and stable in all directions; that range of motion was 0 to 110 degrees; and that the calf circumference was 44 cm. He further indicated that there was some numbness in both extremities and that knee pain was much less severe since the replacements. Dr. MacKay provided diagnoses of bilateral knee degenerative arthritis; status postoperative total knee arthroplasty; bilateral foot neuroma repairs; and morbid obesity. He stated that the date of maximum medical improvement was March 18, 2004. Dr. MacKay opined that appellant had a five percent lower extremity impairment due to her right foot and a 37 percent impairment of the right knee, based upon a good result from a total knee replacement pursuant to Table 17-33. Using the combined tables, he concluded that appellant had a 40 percent impairment of the right lower extremity. Similarly, Dr. MacKay opined that she had a 5 percent sensory loss of the left lower extremity due to her Morton's neuroma and a 37 percent impairment of the left knee, based upon a good result from a total knee replacement. Using the combined tables, Dr. MacKay concluded that appellant had a 40 percent impairment of the left lower extremity.

On a revised schedule award worksheet dated June 18, 2004, the district medical adviser concluded that appellant had a 39 percent impairment for each of her lower extremities. The worksheet reflected a 37 percent impairment for each knee replacement and a 3 percent impairment for each foot, resulting in a combined impairment of 39 percent for each extremity. He opined that the date of maximum medical improvement was March 18, 2004.

By decision dated July 28, 2004, the Office found that the weight of the medical evidence was represented by the report of Dr. MacKay, and that the August 19, 2003 decision should be modified. Accordingly, the Office determined that appellant had a 39 percent impairment of each knee. The Office then determined that the award for each knee should be reduced by 14 percent, the amount paid pursuant to appellant's 1999 schedule award, resulting in an additional 25 percent increase in the schedule award for each lower extremity.

On August 10, 2004 the Office granted appellant an amended schedule award in accordance with its July 28, 2004 decision.

On October 19, 2004 appellant requested reconsideration of the August 10, 2004 schedule award.

By decision dated January 19, 2005, the Office vacated its August 10, 2004 decision. The Office found that appellant should receive an impairment rating for her knees, separate and apart from the 1999 schedule award for her feet. Stating that the awards were based on different injuries, different tables, different editions of the A.M.A., *Guides* and had different dates of maximum medical improvement, the Office concluded that the original schedule award should remain undisturbed. The Office concluded that appellant had an additional 37 percent impairment of each lower extremity.

On January 24, 2005 the Office granted appellant an amended schedule award, finding that she had a 37 percent impairment of each leg. The date of maximum medical improvement was June 10, 2003 and the period of the award was from June 10, 2003 to July 10, 2007. She was entitled to a lump-sum settlement under adjusted schedule award in the amount of \$77,881.77. The Office noted that she had received a lump-sum payment based upon the original schedule award in the amount of \$77,489.98; and that she was entitled to the additional

sum of \$391.79. The record contains daily computation logs and worksheets reflecting that appellant received a lump sum in the amount of \$77,489.98; was entitled to receive \$77,881.77; and therefore was owed an additional \$391.79.

Appellant requested reconsideration of the Office's January 19, 2005 decision, alleging that the second opinion examination was unfair and that the Office's computation of the amended award was incorrect.

By decision dated April 11, 2005, the Office denied modification of its January 19, 2005 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulation<sup>4</sup> sets 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. The Act, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of the Office.<sup>5</sup> 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 regulation as the appropriate standard for evaluating schedule losses.<sup>6</sup>

The Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has not established that she is entitled to a schedule award for greater than a 37 percent impairment of her right lower extremity and a 37 percent impairment of her left lower extremity.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Linda R. Sherman*, 56 ECAB \_\_\_\_ (Docket No. 04-1510, issued October 14, 2004); *Daniel C. Goings*, 37 ECAB 781, 783-84 (1986).

<sup>6</sup> *Ronald R. Kraynak*, 53 ECAB 130, 132 (2001).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

Appellant previously received a schedule award in 1999 for a 28 percent impairment of each foot. Subsequently, pursuant to a separate claim, she underwent left and right knee replacements and requested a schedule award. Relying on the report of appellant's treating physician, the Office medical adviser originally opined that she had a 75 percent impairment of each knee. However, upon reviewing the case in light of appellant's request for a lump-sum payment, a second opinion examination was requested. The Board finds that the second opinion examination performed by Dr. MacKay represents the weight of medical evidence.

The opinion of Dr. Wyman, appellant's physician, lacks probative value in that it fails to properly utilize the A.M.A., *Guides*. Although he referred to certain tables in estimating points attributable to knee replacement results, Dr. Wyman did not correctly convert his findings to an impairment of the lower extremities. Rather, he concluded that appellant had a 51 percent whole person impairment. As neither the Act nor its regulations provide for the payment of a schedule award for the permanent loss of use of the body as a whole, no claimant is entitled to such a schedule award.<sup>8</sup> Moreover, Dr. Wyman did not provide a rationalized explanation for his findings. He did not discuss two manipulations of appellant's knees which occurred subsequent to her knee replacements, the last of which occurred on March 18, 2003. Without explanation, he concluded that appellant was maximally medically improved as of the date of his examination.

The second opinion report provided by Dr. MacKay is thorough and explains his conclusion that appellant has a 37 percent impairment of each extremity as a result of her knee replacements. In the detailed account of his physical examination, he found that her right knee was neurologically intact and stable in all directions; that range of motion was 5 to 110 degrees; and that the calf circumference was 44 cm. Dr. MacKay stated that her left knee was neurologically intact and stable in all directions; that range of motion was 0 to 110 degrees; and that the calf circumference was 44 cm. He further indicated that there was some numbness in both extremities and that knee pain was much less severe since the replacements. Dr. MacKay concluded that, because she underwent her last manipulation of the knees on March 18, 2003, she reached maximum medical improvement one year later on March 18, 2004. The Board finds that Dr. MacKay's report fully supports his opinion that appellant has a 37 percent impairment of each lower extremity, based upon a good result from total knee replacements pursuant to Table 17-33. The opinion of Dr. MacKay is based upon findings of an examination that occurred one year later than the examination performed by Dr. Wyman and on appropriate sections of the fifth edition of the A.M.A., *Guides*. The Board finds that Dr. MacKay's opinion is more reliable and of greater probative value than that of Dr. Wyman. However, the Board also finds that Dr. MacKay's impairment rating of appellant's feet was inappropriate.

On February 18, 1999 appellant was granted a schedule award for a 28 percent impairment of each foot, pursuant to an August 15, 1997 claim that had been accepted for bilateral foot aggravation of neuroma. Therefore, it would be inappropriate at this time for the Office to combine appellant's foot impairment with her knee impairment. According to section 1.4 of the A.M.A., *Guides*, impairment ratings within the same region are generally combined

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<sup>8</sup> 5 U.S.C. § 8107; see also *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *Jay K. Tomokiyo*, 51 ECAB 361 (2000). *Richard R. Lemay*, 56 ECAB \_\_\_\_ (Docket No. 04-1652, issued February 16, 2005).

under the Combined Values Chart.<sup>9</sup> However, impairments of joints which include complex motions, such as the ankle and subtalar joints in the lower extremity, should be added.<sup>10</sup> Therefore, the Board finds that the Office correctly concluded in its January 19 and April 11, 2005 decisions that appellant should receive a schedule award for impairment to her knees, in addition to her earlier award for impairment to her feet.

The Board further finds that the Office properly calculated the amount of appellant's schedule award in its January 19, 2005 decision, finding that the period of the award was from June 10, 2003 to July 10, 2007; that the number of weeks of compensation was 213.12; that the weekly compensation was \$538.35; that the effective date of pay rate was October 14, 2002; that she was entitled to a lump-sum settlement for the adjustment pursuant to the adjusted schedule award in the amount of \$77,881.77; that she had received a lump-sum payment based upon the original schedule award in the amount of \$77,489.98; and that she was, therefore, entitled to the additional sum of \$391.79.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she has more than a 37 percent impairment of each lower extremity.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 11, January 24 and 19, 2005 are affirmed.

Issued: November 10, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> A.M.A., *Guides* 10.

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