

Office accepted that he sustained a sprain of the left knee and an aggravation of left knee chondromalacia patella.

On June 22, 2007 appellant underwent a left knee arthroscopy and lateral release. He filed a claim for a schedule award and submitted a February 19, 2008 impairment evaluation from Dr. Keith Odegard, a Board-certified orthopedic surgeon, who found that he had a 10 percent permanent impairment of the left knee. An Office medical adviser reviewed Dr. Odegard's report on March 29, 2008 and found that there was no evidence that he based his finding on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). He recommended a second opinion evaluation.

By decision dated August 7, 2008, the Office denied appellant's claim for a schedule award. It found that the June 26, 2008 opinion of Dr. Jack C. Tippet, a Board-certified orthopedic surgeon and Office referral physician, established that he had no permanent impairment of the left lower extremity.

The record contains medical evidence dated December 2008 to March 2009 from Dr. Joseph R. Ritchie, a Board-certified orthopedic surgeon, who evaluated appellant for continued left knee pain.¹ On January 29, 2009 Dr. Ritchie performed a left knee arthroscopy with chondroplasty of the central facet of the patella and a partial synovectomy of the anteriomedial and anteriolateral portions of the knee. In follow up reports dated February 6 and March 2, 2009, he noted that appellant's knee had greatly improved and that he had good range of motion.

On March 19, 2009 appellant filed another claim for a schedule award. On May 1, 2009 the Office informed him that the medical evidence submitted was insufficient, as the record did not contain a report in accordance with the sixth edition of the A.M.A., *Guides*.

In a report dated June 24, 2009, Dr. Ritchie found full range of motion of the knee with no swelling or loss of stability or tone. He opined that appellant had a nine percent impairment of the left knee due to his injury. Dr. Ritchie noted that a physician previously found that he had a 12 percent impairment and indicated that he "certainly would not rate him any higher than that."

On July 30, 2009 appellant requested reconsideration. He asserted that his physicians found that he had a permanent left knee impairment due to his January 30, 2007 employment injury. Appellant noted that he had provided an impairment evaluation from Dr. Ritchie.

In a decision dated August 18, 2009, the Office found that the evidence submitted was insufficient to warrant reopening the case for further merit review. It noted that it had authorized left knee surgery subsequent to the August 7, 2008 decision and indicated that it would consider the newly submitted medical evidence in connection with appellant's March 2009 schedule award claim.

¹ A December 11, 2008 magnetic resonance imaging (MRI) study of the left knee showed a small cyst. On January 12, 2009 Dr. Ritchie diagnosed possible chondromalacia that might improve with further arthroscopic surgery. On January 24, 2009 he attributed appellant's continued patella symptoms to his accepted work injury.

On appeal appellant asserted that he had a left knee impairment related that the Office did not consider that his initial surgery was unsuccessful.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁵ A timely request for reconsideration that meets at least one of the standards under section 10.606(b)(2) will be reopened for merit review in accordance with the requirements of 20 C.F.R. § 10.609.⁶ The Office's decision shall contain findings of fact and a statement of reasons.⁷

ANALYSIS

In its August 7, 2008 decision, the Office denied appellant's claim for a schedule award based on the opinion of the second opinion examiner that he did not have a permanent impairment of the left knee. On July 30, 2009 appellant requested reconsideration. He submitted medical evidence regarding his left knee surgery on January 2, 2009 and an impairment evaluation dated June 24, 2009 from Dr. Ritchie. The Office listed the medical evidence submitted by appellant but did not review the evidence as it found that it applied to his March 2009 request for a schedule award. The issue, however, is whether appellant has submitted relevant and pertinent new evidence that he has a permanent impairment of the left knee causally related to the January 30, 2007 employment injury. The Office must consider the medical evidence and determine whether it is relevant and pertinent to the issue upon which it denied his schedule award claim. Further, pursuant to section 10.126 the Office must provide findings of facts and a statement of reasons supported by clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would overcome it."⁸ Accordingly, the case will be remanded for an appropriate decision with a review

² 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Id.*

⁷ *Id.* at § 10.126.

⁸ *Paul M. Colosi*, 56 ECAB 294 (2005); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (March 1997).

of the medical evidence and an explanation regarding whether it is pertinent new and relevant to the issue of whether appellant has a permanent impairment of the left knee due to his accepted work injury.⁹

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: August 20, 2010
Washington, DC

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

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

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

⁹ The Board notes that the Office issued an April 10, 2010 decision granting appellant a schedule award for the left lower extremity. As this decision was issued after he filed his appeal with the Board on November 9, 2009, it is null and void. See *Douglas E. Billings*, 41 ECAB 880 (1990); *Oren E. Beck*, 33 ECAB 1551 (1982).