

aggravated his right knee arthritis when he slipped in snow and hit his postal vehicle.² The Office accepted the claim for aggravation of right knee arthritis. On May 31, 2006 appellant filed a schedule award claim action.

On January 22, 2009 appellant filed another claim for a schedule award and submitted an October 20, 2008 report from Dr. David Weiss, an osteopath, in support of his claim. Dr. Weiss concluded that appellant had a total 10 percent right lower extremity impairment using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).³ He determined that appellant had a five percent impairment for right patellofemoral crepitation/pain, using Table 17-31, page 544 and a two percent impairment for partial right lateral knee meniscectomy, using Table 17-33, page 546, resulting in a total seven percent combined right lower extremity impairment. Next, Dr. Weiss found three percent impairment for pain, using Table 18-1, page 574. He noted the date of maximum medical improvement as October 20, 2008.

In a letter dated April 9, 2009, appellant's counsel noted that appellant had filed a claim for a schedule award and requested the fifth edition of the A.M.A., *Guides* be applied in calculating the award.

By letter dated May 13, 2009, the Office asked Dr. Weiss to provide an impairment rating in accordance with the sixth edition of the A.M.A., *Guides* (6th ed. 2009).

In a September 23, 2009 report, Dr. Weiss, using the sixth edition of the A.M.A., *Guides*, concluded that appellant had three percent right lower extremity impairment after net adjustment. In reaching this determination, he found a two percent impairment for right knee partial lateral meniscectomy, using Table 16-2, page 509, a two percent impairment for palpatory findings, using Table 16-6, page 516 and a two percent impairment for imaging, using Table 16-8, page 519. Dr. Weiss noted that, using the modifiers, appellant had a total three percent right lower extremity impairment.⁴

On December 15, 2009 an Office medical adviser reviewed the medical evidence and concurred with Dr. Weiss' determination of a three percent right lower extremity impairment, using the sixth edition of the A.M.A., *Guides*.

By decision dated January 5, 2010, appellant was granted a schedule award for three percent impairment of the right lower extremity. The period of the award was from October 20 to December 18, 2008 or 8.64 weeks.

² The Office assigned claim number xxxxxx055. On April 10, 1998 an Office hearing representative combined claim number xxxxxx137 with xxxxxx055, with the latter as the master file number.

³ A.M.A., *Guides* (5th ed. 2001).

⁴ The modifiers were listed as follows: GMFH-CDX of one percent (2-1), GMPE-CDX of one percent (2-1) and GMCS-CDX of one percent (2-1).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing federal regulations⁶ 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, the Act 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* was used by the Office to calculate schedule awards.⁸ Effective May 1, 2009, the sixth edition was used.⁹

In addressing lower extremity impairments, the sixth edition requires identifying 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).¹⁰ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹¹

ANALYSIS

The Board finds that appellant has no more than three percent impairment of the right lower extremity. Both Dr. Weiss and the Office medical adviser determined that appellant had a three percent impairment using the sixth edition of the A.M.A., *Guides*.

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.¹² Appellant's accepted diagnosed condition is aggravation of right knee arthritis. Table 16-2 of the sixth edition of the A.M.A., *Guides*, Knee Regional Grid, provides that a meniscal injury can be classified from Class 1 to Class 2, with Class 1 defined as a partial medial or lateral meniscectomy, partial medial and lateral or total medial or lateral meniscectomy or meniscal transplant. A finding under Class 1 of a partial medial or lateral meniscectomy yields impairments ranging from one to three percent.¹³ Both Dr. Weiss and the Office medical adviser graded appellant as the mid-range of Class 1 or a two percent impairment. Both physicians then applied the grade modifiers described in Table 16-5 with analysis provided in Table 16-6

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁹ *Id.* at Exhibit 1 (January 2010); *see also* FECA Bulletin No. 09-03 (issued March 15, 2009).

¹⁰ *Supra* note 3 at 494-531; *see J.B.*, 61 ECAB ____ (Docket No. 09-2191, issued May 14, 2010).

¹¹ *Supra* note 3 at 521.

¹² *Supra* note 9.

¹³ *Supra* note 3 at 509.

through Table 16-8 and the net adjustment formula.¹⁴ Dr. Weiss determined that appellant was entitled to an additional impairment for functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS). The Office medical adviser and Dr. Weiss both concluded that appellant had a total three percent right lower extremity impairment. The Board finds that appellant has no more than three percent right lower extremity impairment rating.

On appeal, appellant's counsel contends that the Office should have used the fifth edition of the A.M.A., *Guides* instead of the sixth edition in determining his schedule award. As noted above, the procedure manual provides that for all decisions issued effective May 1, 2009 the sixth edition of the A.M.A., *Guides* is to be used. As the Office issued a schedule award on January 5, 2010, it properly used the sixth edition of the A.M.A., *Guides*.¹⁵

CONCLUSION

The Board finds that appellant has not established that he has more than three percent right lower extremity impairment, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 5, 2010 is affirmed.

Issued: December 20, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁴ *Id.* at 515-21.

¹⁵ FECA Bulletin No. 09-03 (issued March 15, 2009).