



## **FACTUAL HISTORY**

On December 8, 2008 appellant, then a 38-year-old immigration officer, sustained a ruptured quadriceps tendon of the right knee while training in Texas. Dr. Richard K. Lohmann, an orthopedic surgeon, performed surgical repair on December 23, 2008. Appellant returned to modified duty on February 17, 2009. On May 20, 2009 Dr. Lohmann advised that maximum medical improvement had been reached and that appellant had full extension but lacked forward flexion by approximately 10 degrees with some mild residual weakness on manual muscle testing and hip flexes and quadriceps on the right.

Appellant filed a schedule award claim on June 3, 2009. By letter dated June 25, 2009, the Office asked Dr. Lohmann to provide an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).<sup>1</sup> In a June 29, 2009 report, Dr. Lohmann advised that, under Tables 17-2 and 17-6 of the fifth edition of the A.M.A., *Guides*, appellant had 10 percent and 8 percent impairments respectively, due to diminished range of motion and two centimeters of thigh atrophy, or a combined total of 18 percent right lower extremity impairment.

In a July 10, 2009 report, Dr. James W. Dyer, Board-certified in orthopedic surgery and an Office medical adviser, reviewed Dr. Lohmann's report. He noted the accepted quadriceps muscle tendon rupture and discussed the findings on physical examination, noting lack of 10 percent of knee flexion and residual weakness of the hip flexors and quadriceps with two centimeters of right quadriceps atrophy. Dr. Dyer advised that the sixth edition of the A.M.A., *Guides* at Table 16-3, provided a Class 1 impairment with a default grade of seven percent. He applied the grade modifiers identified in Table 16-5 to find that appellant had an additional one percent impairment under Table 16-7, or eight percent total. By letter dated July 13, 2009, the Office asked Dr. Lohmann to review Dr. Dyer's report. On July 15, 2009 he agreed with Dr. Dyer's rating of eight percent using the sixth edition of the A.M.A., *Guides*.

By decision dated August 3, 2009, appellant was granted a schedule award for an eight percent impairment of the right leg. It ran for 23.04 weeks from June 25 to December 3, 2009.

## **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act,<sup>2</sup> and its implementing federal regulations,<sup>3</sup> 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

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<sup>1</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

claimants.<sup>4</sup> For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>5</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<sup>6</sup>

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).<sup>7</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>8</sup>

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has eight percent impairment of the right lower extremity. It is well established that, when the examining physician does not provide an estimate of impairment conforming to the proper edition of the A.M.A., *Guides*, the Office may rely on the impairment rating provided by a medical adviser.<sup>10</sup> In this case, Dr. Lohmann's June 29, 2009 impairment analysis was based on the fifth edition, rather than the sixth edition of the A.M.A., *Guides*.<sup>11</sup> The Office properly referred the medical evidence to Dr. Dyer, an Office medical adviser, for review under the sixth edition.

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.<sup>12</sup> Appellant's accepted diagnosed condition is rupture of the quadriceps tendon at the knee. Table 16-3 of the sixth edition of the A.M.A., *Guides*, Knee Regional Grid, provides that a ruptured tendon can be classified from Class 0 to Class 4, with Class 1 defined as a mild problem. A finding under Class 1 of a mild motion deficit yields impairments ranging from five

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<sup>4</sup> *Id.* at § 10.404(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>6</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>7</sup> *Supra* note 1 at 494-531; *see J.B.*, 61 ECAB \_\_\_\_ (Docket No. 09-2191, issued May 14, 2010).

<sup>8</sup> *Supra* note 1 at 521.

<sup>9</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

<sup>10</sup> *See J.Q.*, 59 ECAB \_\_\_\_ (Docket No. 06-2152, issued March 5, 2008).

<sup>11</sup> *Supra* note 6.

<sup>12</sup> *Id.*

to nine percent.<sup>13</sup> Dr. Dyer extrapolated the physical findings provided by Dr. Lohmann of 10 percent lack of knee flexion. He graded appellant's impairment in the mid-range of Class 1, or a seven percent impairment. Dr. Dyer then applied the grade modifiers described in Table 16-5 with analysis provided in Tables 16-6 through 16-8 and the net adjustment formula.<sup>14</sup> He determined that appellant was not entitled to an additional impairment for functional history (GMFH) or clinical studies (GMCS). Dr. Dyer found that appellant was entitled to an additional one percent impairment for physical findings (GMPE) under Table 16-7 due to two centimeters of atrophy.<sup>15</sup> The Office medical adviser properly concluded that appellant had a total eight percent right lower extremity impairment. The Office forwarded Dr. Dyer's impairment rating to Dr. Lohmann, who agreed with the rating on July 15, 2009. The Board finds that Dr. Dyer's medical report constitutes the weight of medical opinion.

On appeal, appellant contends that the schedule award is not adequate as his knee condition limits his daily activities and recreational pursuits. Under the schedule, Congress has defined the number of weeks of compensation payable for loss of use of a member.<sup>16</sup> Factors such as limitations on daily activities or recreational activities do not go into the determination of impairment under an award.<sup>17</sup> The record does not contain any medical evidence to establish greater impairment in accordance with the sixth edition of the A.M.A., *Guides*. Appellant has not established that he sustained more than eight percent impairment of his right leg.<sup>18</sup>

### CONCLUSION

The Board finds that appellant has eight percent impairment to his right leg.

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<sup>13</sup> *Supra* note 1 at 509.

<sup>14</sup> *Id.* at 515-21.

<sup>15</sup> *Id.* at 517.

<sup>16</sup> *See Brent A. Barnes*, 56 ECAB 336 (2005).

<sup>17</sup> *See E.L.*, 59 ECAB \_\_\_\_ (Docket No. 07-2421, issued March 10, 2008); *Dennis R. Stark*, 57 ECAB 306 (2006).

<sup>18</sup> Appellant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Tommy R. Martin*, 56 ECAB 273 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 23, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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