

in the performance of her work duties. On June 26, 2008 she underwent excision of the plica band, chondroplasty of the patellofemoral and medial compartment medial femoral condyle and subtotal medial meniscectomy on the left knee. The surgery was performed by Dr. Louis G. Horn, III, an attending Board-certified orthopedic surgeon.

On March 29, 2009 appellant filed a claim (Form CA-7) for a schedule award. By letter dated April 8, 2009, the Office requested that appellant submit a medical report from her attending physician, which provided an impairment rating, based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a May 5, 2009 medical report, Dr. Horn diagnosed post-traumatic chondromalacia and early osteoarthritis of the left knee. He advised that appellant reached maximum medical improvement on August 18, 2008. On physical examination, Dr. Horn reported that the left knee lacked 20 degrees of full flexion as compared to the right knee. There was decreased strength of extension by 10 percent as compared to the right knee with quadriceps resistance testing. There was no effusion and the knee was stable. On neurological examination, Dr. Horn advised that motor and sensory were maintained. There were no atrophy ankylosis sensory changes. Dr. Horn determined that appellant sustained a seven percent impairment of the left lower extremity based on her Grade 3 chondromalacia of the medial femoral condyle and patellofemoral joint, which were found at the time of surgery.¹

On May 15, 2009 an Office medical adviser reviewed appellant's medical records, including Dr. Horn's May 5, 2009 findings. He noted Dr. Horn's finding that the left knee lacked 20 degrees of flexion compared to the right knee and stated that he failed to provide the actual range of motion in degrees.² The medical adviser further stated that Dr. Horn found loss of strength of the quadriceps but, did not find any atrophy. He determined that appellant reached maximum medical improvement on August 18, 2008. The medical adviser determined that appellant sustained two percent impairment of the left lower extremity based on her partial medial meniscectomy (A.M.A., *Guides* 509, Table 16-3). He found that appellant was not entitled to any adjustments for other functional deficits (A.M.A., *Guides* 516, 517, Table 16-6 and Table 16-7).³

By decision dated May 19, 2009, the Office granted appellant a schedule award for two percent impairment of the left lower extremity.

¹ In summarizing his findings, Dr. Horn noted that appellant had 10 degrees loss of flexion. However, this appears to be a typographical error as he reported physical findings of 20 degrees loss of flexion.

² The Office medical adviser noted that he would reconsider Dr. Horn's opinion if he later provided the actual range of motion in degrees.

³ The Office medical adviser demonstrated that there was no change by showing the following: Functional History Grade Modifier (FHGM) mild problem was 1-1 = 0 (A.M.A., *Guides* 516, Table 16-6); Physical Examination Grade Modifier (PEGM) mild problem was 1-1 = 0 (A.M.A., *Guides* 517, Table 16-7); and Critical Study Grade Modifier (CSGM) mild problem was inapplicable, thereby resulting in zero. The Office medical adviser subtracted the results of the PEGM zero from the results of the FHGM zero, resulting in a net adjustment of zero.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act⁴ and its implementing regulations⁵ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁶ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used to calculate schedule awards.⁸

ANALYSIS

The Office accepted appellant's claim for a torn meniscus posterior horn of the left knee. Appellant underwent excision of the plica band, chondroplasty of the patellofemoral and medial compartment medial femoral condyle and subtotal medial meniscectomy on June 26, 2008 to treat the accepted left lower extremity condition. On May 19, 2009 she received a schedule award for a two percent impairment of her left lower extremity. The Board finds that appellant has not met her burden of proof to establish that she has greater impairment than that for which she received an award.

On May 5, 2009 Dr. Horn, an attending physician, opined that appellant sustained a 7 percent impairment of the left lower extremity based on her Grade 3 chondromalacia of the medial femoral condyle and patellofemoral joint. He advised that her left knee lacked 20 degrees of full flexion as compared to the right knee and decreased strength of extension by 10 percent as compared to the right knee with quadriceps resistance testing. Dr. Horn found no effusion and stated that the knee was stable. He further found that motor and sensory were maintained. Dr. Horn found no atrophy ankylosis sensory changes. He failed to explain how he arrived at his impairment rating. Dr. Horn did not refer to any edition of the A.M.A., *Guides* or the specific tables he applied to support his rating. It is well established that, when an attending physician's report provides an estimate of impairment but does not address how the rating was made under the A.M.A., *Guides*, it is of reduced probative value. The Office may follow the advice of its medical adviser or consultant.⁹

⁴ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁵ 20 C.F.R. § 10.404.

⁶ 5 U.S.C. § 8107(c)(19).

⁷ 20 C.F.R. § 10.404.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a. (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ *J.Q.*, 59 ECAB ___ (Docket No. 06-2152, issued March 5, 2008); *Laura Heyen*, 57 ECAB 435 (2006).

On May 19, 2009 the Office medical adviser reviewed Dr. Horn's findings with reference to the sixth edition of the A.M.A., *Guides*. He determined that under Table 16-3 on page 509 of the A.M.A., *Guides* appellant sustained a two percent impairment of the left lower extremity due to her June 26, 2008 partial medial meniscectomy. The medical adviser further determined that she was not entitled to any adjustments for other functional deficits under Table 16-6 and Table 16-7 on pages 516 and 517, respectively of the A.M.A., *Guides* as he found a zero percent net adjustment. He stated that, although Dr. Horn found that appellant's left knee lacked 20 degrees of flexion compared to the right knee, he did not provide the actual range of motion in degrees. The medical adviser noted that Dr. Horn stated that he found loss of strength of the quadriceps but, did not find any atrophy.

The Office medical adviser based his opinion on a proper review of the record and appropriately applied the A.M.A., *Guides* to find that appellant had a two percent impairment of the left lower extremity. There is no probative medical evidence to establish that appellant sustained greater permanent impairment. The Board will affirm the May 19, 2009 decision.¹⁰

Appellant contended on appeal that she had not reached maximum medical improvement because she was off work on August 18, 2008 and still experienced limited use of her left leg. Schedule awards, however, commence on the date that the medical evidence establishes that the employee has reached maximum medical improvement from the residuals of the employment injury, *i.e.*, that the injured member of the body has stabilized and will not improve further.¹¹ Dr. Horn, appellant's attending physician, determined that she had reached maximum medical improvement by August 18, 2008. The Board finds that appellant's contention is not supported by the evidence of record.

CONCLUSION

The Board finds that appellant has failed to establish that she has more than two percent impairment of the left leg, for which she received a schedule award.

¹⁰ See *C.J.*, 60 ECAB ___ (Docket No. 08-2429, issued August 3, 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹¹ See *James E. Earle*, 51 ECAB 567 (2000).

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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