



mail for 13 years. On June 7, 2000 the Office accepted appellant's claim for left knee chondromalacia patella.

On August 5, 2008 appellant filed a claim for a schedule award. By letter dated September 11, 2008, the Office requested that appellant submit further information including a medical report establishing that she has reached maximum medical improvement as well as her physician's assessment with regard to the loss of function of the affected body member, and gave appellant 30 days to submit the evidence. No new evidence was timely submitted.

By decision dated October 23, 2008, the Office denied appellant's claim for a schedule award.

By letter dated October 29, 2008, appellant requested a telephonic hearing before an Office hearing representative.

In a May 12, 2008 report, Dr. David Weiss, an osteopath, reviewed appellant's work history including a February 19, 1999 injury, which occurred while delivering mail, and a second injury on February 15, 2000, which occurred when her knees gave out. He reviewed appellant's medical records, discussed his findings on physical examination and noted range of motion findings. Dr. Weiss listed his diagnoses as chronic post-traumatic cervical and lumbosacral strain and sprain; bulging cervical disc C4-5 and C5-6; bulging lumbar disc L4-L5, lumbar upper extremity radiculitis; cumulative and repetitive trauma disorder superimposed upon a defined work-related injury to the left knee February 15, 2000; chondromalacia patella to the left knee; and patellofemoral arthralgia to the right knee. He determined that, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> edition, 2001), appellant had a 15 percent impairment of the left lower extremity. Dr. Weiss reached this conclusion by finding that appellant had a 3 percent impairment due to pain and a 12 percent impairment of the left lower extremity due to a Grade 4/5 motor strength weakness in the left quadriceps "(knee extension)," for a total impairment to the left lower extremity of 15 percent.<sup>1</sup>

At the hearing held on February 11, 2009, appellant testified with regard to her injury, noted that she retired on disability and indicated that she now works as a security guard checking identification.

By decision dated March 18, 2009, the hearing representative denied appellant's claim for a schedule award. The hearing representative stated that Dr. Weiss did not explain in medical terms why appellant's weakness and pain was due to the accepted February 15, 2000 condition of left chondromalacia patella related to walking up and down stairs. Further, the hearing representative found that Dr. Weiss' opinion was based on an inaccurate history.

By letter dated May 22, 2009, appellant requested reconsideration. In support thereof, she submitted an April 15, 2009 report, wherein Dr. Weiss stated that, after reviewing the medical record, "it is apparent that the claimant's injury to the left knee was that of cumulative and repetitive trauma disorder as there was no defined work-related injury to her left knee occurring on February 15, 2000."

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<sup>1</sup> Dr. Weiss utilized the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) 530, Table 17-6, 532 and Table 17-8, 574.

By decision dated September 11, 2009, the Office denied modification of the denial of the schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing 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 to all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>4</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup>

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>6</sup>

### **ANALYSIS**

The Office accepted appellant's claim for left knee chondromalacia patella. However, it denied appellant's claim for a schedule award, finding that the report of Dr. Weiss did not accurately reflect the history of appellant's injury. The Board notes, however, that the issue in this case was not whether appellant sustained an injury causally related to her federal employment as the claim had already been accepted for left knee chondromalacia patella. Rather, the issue was whether appellant sustained a permanent impairment caused by the accepted injury which entitled appellant to a schedule award.

The Board finds that the Office did not properly develop the medical evidence with regard to appellant's entitlement to a schedule award. Dr. Weiss provided a report wherein he discussed appellant's history, provided measurements with regard to range of motion and determined an impairment rating. This detailed report included a history of clinical presentation, physical findings, functional history, clinical studies or objective tests, analysis of findings and appropriate impairment ratings. Dr. Weiss determined that appellant had a permanent impairment to her left lower extremity of 15 percent. The 15 percent impairment rating was based on the fifth edition of the A.M.A., *Guides* from which he concluded appellant sustained 3

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Id.* at § 10.404(a).

<sup>5</sup> *Id.*

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

percent impairment of the left lower extremity due to pain and 12 percent impairment of the left lower extremity due to Grade 4/5 motor strength weakness. Prior to denying the claim, pursuant to Office procedures, this report, along with appellant's file, should then have been referred to the Office medical adviser for an opinion concerning the nature and percentage of impairment.<sup>7</sup>

The Board will remand the case to the Office to undertake additional development of the medical evidence to appropriately determine if appellant has a permanent impairment for schedule award purposes. On remand the Office should develop the medical evidence as appropriate to determine the extent of permanent impairment due to appellant's accepted employment injury under the A.M.A., *Guides*.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 11, 2009 is set aside, and the case remanded for further consideration consistent with this decision.

Issued: November 10, 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

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<sup>7</sup> *Id.*