

On September 19, 2006 appellant underwent an arthroscopy of the right knee for a partial lateral meniscectomy. The procedure was performed by Dr. William A. Matarese, a Board-certified orthopedic surgeon.

In a January 24, 2009 report, Dr. Arthur Becan, Board-certified in orthopedic surgery, found that appellant had a 15 percent impairment of the right lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). He based this finding on a four out of five strength deficit of the right quadriceps, which yielded a 12 percent impairment under Table 17-8 at page 532 of the A.M.A., *Guides* and a 3 percent impairment for pain at Table 18-1 at page 574.

On March 30, 2009 appellant filed a claim for a schedule award based on a partial loss of use of his right lower extremity.

By letters dated July 28, 2009 and February 22, 2010, the Office advised Dr. Becan that he needed to submit a new report and impairment rating in conformance with the sixth edition of the A.M.A., *Guides*, which became effective as of May 1, 2009.²

In a March 5, 2010 report, Dr. Becan found that appellant had a two percent permanent impairment of the right lower extremity pursuant to the sixth edition of the A.M.A., *Guides*. He determined that appellant had a default impairment of Class 1, which yielded a Grade C impairment of two percent at Table 16-3, page 509 of the A.M.A., *Guides*.³ Applying the net adjustment formula at pages 521-22 of the A.M.A., *Guides*,⁴ Dr. Becan found that appellant had a Class 1 impairment, the rating utilized for a mild problem for right knee, status post medial meniscectomy. He found that the grade at Table 16-6 for functional history was two, for a moderate problem; the grade for physical examination at Table 16-7 was one, for a mild problem; and the grade at Table 16-8 for clinical studies was one, for a mild problem. Dr. Becan then subtracted the grade modifier of one from Grade 2 at Table 16-6 and from Grade 1 at Table 16-7 and Table 16-8; this yielded a two percent impairment of the right lower extremity impairment for partial meniscectomy.

In an April 18, 2010 report, an Office medical adviser agreed with Dr. Becan's impairment rating conclusions of two percent.

By decision dated May 4, 2010, the Office granted appellant a schedule award for a two percent permanent impairment of the right lower extremity for the period January 24 to March 5, 2009 or a total of 5.76 weeks of compensation.

² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009. FECA Bulletin No. 09-03 (issued March 15, 2008).

³ A.M.A., *Guides* 509.

⁴ *Id.* at 521-22.

LEGAL PRECEDENT

The schedule award provision of the Act⁵ and its implementing 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁸

ANALYSIS

The Office granted appellant a schedule award for a two percent right lower extremity impairment based on a partial meniscectomy, using the applicable table of the sixth edition of the A.M.A., *Guides*. The section of the A.M.A., *Guides* which rates diagnosis-based impairments for the lower extremities is located at Chapter 16, which states at page 497, Section 16.2a that impairments are defined by class and grade. This section states:

“The Impairment Class (IC) is determined first, by using the corresponding diagnosis-based regional grid. The grade is then determined using the adjustment grids.

“Once the impairment class has been determined, based on the diagnosis, the grade is initially assigned the default value, C. The final impairment grade, within the class, is calculated using the grade modifiers, or nonkey factors, as described in Section 16.3. Grade modifiers include functional history, physical examination, and clinical studies. The grade modifiers are used on the net adjustment formula described in Section 16.3d to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down the default value C, by the calculated net adjustment....”⁹

Using the formula above and the net adjustment formula outlined at pages 516-18 and 521-22 of the A.M.A., *Guides*, Dr. Becan found that appellant had a Class 2 impairment for functional history at Table 16-6, which yielded a grade of two. He then applied the net adjustment formula at pages 521-22 of the A.M.A., *Guides*, subtracting a grade modifier of one

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404. Effective May 1, 2009, the Office began using the A.M.A., *Guides* (6th ed. 2009).

⁷ *Id.*

⁸ *Veronica Williams*, 56 ECAB 367, 370 (2005).

⁹ A.M.A., *Guides* 497.

from two, for a net, adjusted total of one. Dr. Becan then applied the net adjustment formula for physical examination and clinical studies at Table 16-7 and Table 16-8, finding that appellant had a grade modifier of one for physical examination and clinical studies at Table 16-7 and Table 16-8, which he subtracted from the grade of one at each table. This equaled a net zero impairment for physical examination and clinical history, as adjusted. Based on this calculation Dr. Becan found that appellant had an adjusted two percent right lower extremity impairment for partial meniscectomy.

The Board finds that the weight of medical evidence establishes a two percent permanent impairment of appellant's right lower extremity. This rating was based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. As appellant did not submit any medical evidence to support an additional schedule award greater than the two percent for the right lower extremity already awarded, the Board will affirm the Office's May 4, 2010 decision.

On appeal, appellant's representative argues that appellant reached maximum medical improvement on January 24, 2009 and therefore the fifth edition of the A.M.A., *Guides* should have been used to rate appellant's permanent impairment. In *Harry D. Butler*,¹⁰ the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.¹¹ On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of the Office should reflect use of the sixth edition of the A.M.A., *Guides*.¹² The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed.

CONCLUSION

The Board finds that appellant has no more than a two percent permanent impairment of the right lower extremity, for which he received a schedule award.

¹⁰ 43 ECAB 859 (1992).

¹¹ *Id.* at 866.

¹² FECA Bulletin No. 09-03 (March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 4, 2010 is affirmed.

Issued: April 14, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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