

FACTUAL HISTORY

On June 18, 2001 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim alleging that he injured his right knee and ankle when a step broke. A July 15, 2001 magnetic resonance imaging (MRI) scan of the right knee demonstrated no evidence of a meniscal tear and a partial tear of the quadriceps tendon, small joint effusion and Stage 3 chondromalacia patellae. On August 9, 2001 OWCP accepted that appellant sustained an employment-related right meniscus tear and authorized arthroscopy.

Arthroscopic examination of the right knee on August 30, 2001, done by Dr. Anthony Balsamo, Board-certified in orthopedic surgery, demonstrated full knee range of motion, no sign of a quadriceps mechanical problem and chondromalacia of the patella, with grade 3 osseous calcifications. The medial meniscus, anterior and posterior cruciates were normal.

Appellant retired in November 2004. On November 20, 2008 he filed a schedule award claim, and submitted a September 23, 2008 report in which Dr. Arthur Becan, an orthopedic surgeon, advised that in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),² appellant had a five percent right lower extremity impairment due to knee patellofemoral pain and crepitation. On April 7, 2009 OWCP asked appellant to submit a report within 30 days in accordance with the sixth edition of the A.M.A., *Guides*,³ which was required for impairment evaluations. By decision dated May 20, 2009, it denied appellant's schedule award claim on the grounds that he did not submit appropriate medical evidence. Appellant's attorney timely requested a hearing and in an August 14, 2009 decision, OWCP's hearing representative vacated the May 20, 2009 decision and remanded the case to OWCP for review by OWCP's medical adviser.

In a September 22, 2009 report, Dr. Morley Slutsky, OWCP's medical adviser who is Board-certified in occupational medicine, reviewed the record, including Dr. Becan's September 23, 2008 report. He advised that this was the date of maximum medical improvement and that, in accordance with Table 16-3 of the sixth edition of the A.M.A., *Guides*, for a partial meniscectomy, appellant had a Class 1 impairment with a default grade C which was equal to a two percent right lower extremity impairment.

Dr. Becan submitted a revised September 23, 2008 report in which he provided analysis in accordance with the sixth edition of the A.M.A., *Guides*. He reported that appellant had Class 2 impairment due to right knee patellofemoral arthritis equal to 15 percent impairment. Dr. Becan then used the net adjustment formula and found an additional 2 percent impairment, for a total 17 percent right lower extremity impairment, with a date-of-maximum medical improvement of September 23, 2008.

OWCP referred appellant to Dr. Steven J. Valentino, a Board-certified osteopath specializing in orthopedic surgery. In a December 15, 2009 report, Dr. Valentino reported the history of injury, appellant's complaint of occasional right knee pain and his review of the

² A.M.A., *Guides* (5th ed. 2001).

³ A.M.A., *Guides* (6th ed. 2008).

medical record including the July 13, 2001 MRI scan study and August 30, 2001 operative report. He provided physical examination findings which, he advised, were completely normal. Dr. Valentino diagnosed resolved strain of the right knee and advised that appellant was fully and completely recovered from the work-related injury with no residuals. He explained that, although the statement of accepted facts noted a tear of the medial meniscus, intraoperative findings demonstrated an intact meniscus with no tear. Dr. Valentino advised that the degenerative changes about the undersurface of the patella bore no connection to the employment injury and were preexisting and that appellant was capable of working full duty without restriction.

On January 16, 2010, Dr. Arnold T. Berman, OWCP's medical adviser who is Board-certified in orthopedic surgery, noted his review of the record including Dr. Becan's sixth edition assessment and Dr. Valentino's report. He advised that he was in agreement with Dr. Becan's diagnosis because it was consistent with the medical documentation, noting that it would not be appropriate to make a diagnosis of meniscal tear as one was not documented on the MRI scan or operative report. Dr. Berman, however, disagreed with Dr. Becan's impairment rating, stating that Dr. Becan found Class 2 impairment due to patellofemoral arthritis under Table 16-3, Knee Regional Grid. Dr. Berman maintained that, because the operative report indicated that there was remaining cartilage, it was not appropriate to choose Class 2 which is described as having either a one millimeter (mm) or no cartilage interval and that Class 1 was the more appropriate choice as Class 1 is described as having a 2 mm cartilage interval and has a default value C for a 10 percent impairment. Dr. Berman then utilized the adjustment modifiers and found a net adjustment of zero. He concluded that appellant had 10 percent right lower extremity impairment with maximum medical improvement attained on September 23, 2008, the date of Dr. Becan's examination.

On January 29, 2010 appellant was granted a schedule award for a 10 percent impairment of the right lower extremity, for a total of 28.8 weeks, to run from September 23, 2008 to April 12, 2009. His attorney timely requested a hearing, which was held on May 18, 2010. At the hearing appellant testified that he had right knee pain, laxity, grinding and clicking and that it was difficult for him to walk up stairs. His attorney argued that a conflict in medical evidence existed between the opinions of Dr. Becan and OWCP's medical adviser.

By decision dated July 13, 2010, OWCP's hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Berman and affirmed the January 29, 2010 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing federal regulations,⁵ 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, FECA does not specify the manner in which the percentage of loss shall be determined. For

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷ For decisions issued after May 1, 2009, the sixth edition will be used.⁸

Under the sixth edition, for lower extremity impairments the evaluator identifies 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).⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹¹

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with medical adviser providing rationale for the percentage of impairment specified.¹² In determining entitlement to a schedule award, preexisting impairment to the scheduled member is to be included.¹³

ANALYSIS

The Board finds that appellant has not established that he has an impairment of the right lower extremity greater than 10 percent. The sixth edition of the A.M.A., *Guides* provides that, in the event that a specific diagnosis is not listed in the diagnosis-based impairment grid, the examiner should identify a similar listed condition to be used as a guide to the impairment calculation. The rationale for this decision should be given.¹⁴ As noted by Drs. Becan, Valentino and Berman, a meniscal tear was not found on the July 15, 2001 MRI scan or during the August 30, 2001 arthroscopic procedure. Dr. Berman, OWCP's medical adviser, opined that Dr. Becan correctly diagnosed patellofemoral arthritis, which was documented by MRI scan and examination. It was therefore appropriate for appellant's impairment to be rated for patellofemoral arthritis.

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ A.M.A., *Guides* 494-531.

¹⁰ *Id.* at 521.

¹¹ *Id.* at 23-28.

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹³ *Peter C. Belkind*, 56 ECAB 580 (2005).

¹⁴ A.M.A., *Guides*, *supra* note 2 at 500.

Dr. Berman, however, disagreed with Dr. Becan's choice of Class 2 impairment, under Table 16-3, Knee Regional Grid.¹⁵ Dr. Berman advised that, because the operative report indicated that there was remaining cartilage, it was not appropriate to choose Class 2, noting that it is described as having either a one mm or no cartilage interval. He maintained that Class 1 was the more appropriate choice as Class 1 is described as having a 2 mm cartilage interval and has a default value of C for 10 percent impairment. Dr. Berman then utilized the adjustment modifiers and net adjustment formula and found a net adjustment of zero. He concluded that appellant had 10 percent right lower extremity impairment with maximum medical improvement attained on September 23, 2008, the date of Dr. Becan's examination.

Table 16-3 states that Class 1 is defined as having a mild problem and Class 2 as having a moderate problem. It further provides that a Class 1 patellofemoral arthritis may be rated as 1 to 13 percent with 1 to 5 percent for a full-thickness articular cartilage defect of ununited osteochondral fracture and 7 to 13 percent for a 2 mm cartilage interval. Class 2 is rated at 14 to 24 percent with a one mm cartilage interval yielding a 14 to 17 percent impairment and no cartilage interval yielding a 16 to 24 percent impairment.¹⁶ The sixth edition explains that an impairment is initially assigned the default value of C and then the final impairment is calculated using the grade modifiers described in section 16.3.¹⁷

Dr. Valentino, who examined appellant in December 2009, advised that he could return to full duty without restrictions. There is no objective evidence in this case describing a specific cartilage interval. Dr. Berman properly explained his calculations under the sixth edition of the A.M.A., *Guides* and explained why Dr. Becan's rating was not in conformance with the A.M.A., *Guides*. There is no probative medical evidence of record that appellant had a greater impairment. Accordingly, there is no conflict in medical evidence and appellant has not established entitlement to greater than a 10 percent impairment of the right lower extremity for which he received a schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.¹⁸

CONCLUSION

The Board finds that appellant has not established that he has right lower extremity impairment greater than 10 percent for which he received a schedule award.

¹⁵ *Id.* at 511.

¹⁶ *Id.*

¹⁷ *Id.* at 497, section 16.2.

¹⁸ For example, appellant could submit evidence such as an x-ray or MRI scan describing a specific cartilage interval.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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