



related to employment factors under case number xxxxxx367. OWCP accepted the claim for dislocation of the left patella. It commenced payment for temporary total disability compensation as of September 19, 2007 and placed her on the periodic rolls.

On December 23, 2008 appellant underwent arthroscopic surgery for ligament reconstruction.

Appellant returned to light duty on May 11, 2009. She filed another Form CA-2 claim for occupational disease for a left knee condition on June 28, 2009 under case number xxxxxx815; OWCP accepted this claim for acute exacerbation of left medial collateral ligament sprain. The claims were combined under case number xxxxxx819.

In a November 12, 2009 report, Dr. Arthur Becan, Board-certified in orthopedic surgery, found that appellant had an 18 percent permanent impairment of the left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). He advised on examination that appellant had complaints of daily left knee pain, swelling and stiffness of intermittent severity. Dr. Becan stated that she also had complaints of instability with locking of her left knee. He diagnosed post-traumatic internal derangement to the left knee, recurrent patellofemoral instability to the left knee and post-traumatic chondromalacia patella in the left knee. Dr. Becan rated a class 2, 16 percent disability based on left patellar subluxation with instability 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 510 of the A.M.A., *Guides*.<sup>2</sup> Applying the net adjustment formula at pages 521-22 of the A.M.A., *Guides*,<sup>3</sup> Dr. Becan found that appellant had a class 2 impairment, the rating utilized for a moderate problem for left knee, patellar subluxation or dislocation. He found that the grade at Table 16-6 for functional history was 2, for a moderate problem; the grade for physical examination at Table 16-7 was 1, for a mild problem; and the grade at Table 16-8 for clinical studies was 1, for a mild problem. Dr. Becan then subtracted the grade modifier of 1 from grade 2 at Table 16-6 and from grade 1 at Tables 16-7 and 16-8; this yielded a total, adjusted 18 percent impairment of the left lower extremity impairment.

In order to determine whether appellant could return to her usual job as a letter carrier, OWCP referred her for a second opinion examination with Dr. Stanley Soren, Board-certified in orthopedic surgery. In a February 23, 2010 report, Dr. Soren stated findings on examination and made findings on appellant's ability to perform work. He reviewed a list of questions pertaining to whether she could return to her usual job. Dr. Soren did not conduct an impairment evaluation or render an opinion as to whether appellant had any impairment stemming from her accepted left knee conditions.

On March 11, 2010 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left lower extremity.

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<sup>2</sup> A.M.A., *Guides* 510.

<sup>3</sup> *Id.* at 521-22.

In a June 10, 2010 report, Dr. Henry J. Magliato, Board-certified in orthopedic surgery and an OWCP medical adviser, reviewed the reports from Drs. Becan and Soren and found that appellant had an eight percent permanent impairment under the A.M.A., *Guides*. He opined that Dr. Becan used the wrong figures in the net modifier adjustment formula and rendered a grade modifier of +2 in his calculations instead of the proper figure, a -2. Dr. Magliato further stated that Dr. Becan based his rating on patella subluxation with moderate instability, a class 2 rating, without sufficient, supporting objective findings. He advised that Dr. Becan's examination did not indicate that there was moderate patella instability, crepitus or pain on patellofemoral compression, which constituted evidence that the patella was no longer subluxing. Dr. Magliato also stated that Dr. Soren's February 23, 2010 report did not mention any patella instability in the left knee, merely indicating that she had mild grinding. He therefore rated a class 1 impairment on page 510, Table 16-3, for mild instead of moderate instability in the patella, which rendered an eight percent impairment for the left lower extremity under that table.

On July 23, 2010 OWCP granted appellant a schedule award for an eight percent permanent impairment of the left lower extremity for the period November 12, 2009 to April 13, 2010, for a total of 23.04 weeks of compensation.

On July 28, 2010 appellant, through her attorney, requested an oral hearing, which was held on November 5, 2011.

By decision dated December 20, 2010, an OWCP hearing representative affirmed the July 23, 2010 decision.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>4</sup> and its implementing regulations<sup>5</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, FECA 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.<sup>6</sup> 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.<sup>7</sup>

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>6</sup> *Id.*

<sup>7</sup> *Veronica Williams*, 56 ECAB 367, 370 (2005).

## ANALYSIS

On appeal, appellant's counsel argues that a conflict in medical opinion exists between Dr. Becan and Dr. Magliato concerning the nature and the extent of permanent impairment caused by the accepted left knee condition. The Board finds that there is a conflict in the medical evidence between these two physicians of record. Dr. Becan rated an 18 percent impairment to the left lower extremity pursuant to the sixth edition of the A.M.A., *Guides* based on a class 2, moderate impairment for patellar instability. He stated in his report that appellant had complaints of instability with locking of her left knee, diagnosed post-traumatic internal derangement to the left knee with recurrent patellofemoral instability to the left knee, post-traumatic chondromalacia patella in the left knee and patellar subluxation with instability. Dr. Magliato, an OWCP medical adviser, found that appellant had an eight percent impairment of her left lower extremity pursuant to the sixth edition of the A.M.A., *Guides*. He disagreed with Dr. Becan's finding of a moderate impairment based on patellar instability, finding that she only rated a mild, class 1 impairment for patellar instability based on subluxation or dislocation which yielded an eight percent impairment under Table 16-3, page 510.

The Board notes that Dr. Becan presented a probative, well-supported method for calculating an impairment of the left lower extremity, which was in conformance with the applicable protocols of the A.M.A., *Guides*. Further, Dr. Magliato's reliance on Dr. Soren's opinion for purposes of an impairment rating was in error. Dr. Soren was asked by OWCP to determine whether appellant was capable of returning to her usual job as a letter carrier and to evaluate the extent of her disability. His report did not contain findings intended to evaluate impairment of the accepted left knee condition and therefore is of no probative value with regard to consideration of a schedule award. Therefore a conflict exists in the medical opinion evidence between Dr. Becan and Dr. Magliato as to the degree of impairment caused by appellant's accepted left patellar knee condition.

Accordingly, the Board set aside the December 20, 2010 OWCP decision and remands for referral of appellant, the case record and a statement of accepted facts to an appropriate independent medical specialist to determine the nature and the degree of appellant's permanent impairment to her accepted left knee condition. The impartial specialist should be instructed to provide the appropriate net adjustment for functional history, the final overall adjustment grade, and the correct modifier for clinical studies. On remand, OWCP should instruct the impartial medical specialist to resolve this conflict and to clearly indicate the specific background and protocols of the A.M.A., *Guides* upon which he based his opinion. After such further development of the record as it deems necessary, it shall issue a *de novo* decision.

## CONCLUSION

The Board finds that the case is not in posture for decision. The December 20, 2010 decision is remanded for further development of the medical evidence.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 20, 2010 decision of the Office of Workers' Compensation Programs be set aside and the case is remanded to OWCP for further action consistent with this decision of the Board.

Issued: December 6, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board