

ligament reconstruction using tibialis anterior allograft on June 8, 2009. Appellant received compensation benefits.

In an August 25, 2009 disability certificate, Dr. James L. Rushford, a treating Board-certified orthopedic surgeon and osteopath, advised that appellant could return to work with no limitations.

On October 12, 2009 appellant filed a claim for a schedule award.

In an October 21, 2009 letter, the Office requested that appellant have her treating physician provide an impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2008). It subsequently received a November 3, 2009 report from Dr. Anwar A. Khan, a Board-certified psychiatrist, who advised that he did not perform impairment ratings.

In a letter dated November 16, 2009, the Office requested that Dr. Rushford provide an impairment rating utilizing the A.M.A., *Guides*. Appellant was also provided a copy of this letter. He did not respond.

On December 1, 2009 the Office referred appellant to Dr. Boris Khariton, Board certified in physical medicine and rehabilitation, for a second opinion to determine whether she had any ratable impairment due to her accepted knee condition.

In a January 29, 2010 report, Dr. Khariton noted appellant's history of injury and treatment and determined that she had reached maximum medical improvement. On examination of the right lower extremity, he found no edema or erythema in the right knee, hip or ankle joints. Dr. Khariton explained that appellant had good range of motion in the right knee (0 to 130 degrees) that was about the same when compared to the left. There was no right knee instability and no pain with palpation of the right lateral or medial knee aspects. Dr. Khariton noted three very small scars at the right anterior knee below the patella from her arthroscopic surgery. He found motor strength to be normal in both lower extremities, with sensation to light touch and pin prick in both lower extremities. Appellant had normal reflexes, which were symmetrical at both knees and ankles, with no ankle clonus. He advised that the gait examination revealed that appellant ambulated independently with no assisted devices and a normal gait pattern. Dr. Khariton advised that appellant was status post right anterior cruciate ligament reconstruction on June 8, 2009 and had mild right knee pain, stiffness and complaint of numbness with a normal clinical examination of the right knee. He referred to Table 16-3, Table 16-8 and Table 16-9 and determined that appellant had no permanent impairment.¹

In a March 1, 2010 report, the Office medical adviser reviewed appellant's right knee surgery and complaint of stiffness, numbness and pain. The physical examination by Dr. Khariton revealed right knee range of motion from 0 to 130 degrees with no instability. The Office medical adviser determined that appellant's surgical incisions had healed, there was no evidence of infection and her motor and sensation were normal. Given appellant's normal physical examination which included no residual instability, he concurred with Dr. Khariton that

¹ A.M.A., *Guides* 509-11, 519-20.

there was no objective basis for rating impairment of the right leg. The Office medical adviser noted that appellant reached maximum medical improvement on January 29, 2010.

By decision dated March 10, 2010, the Office denied appellant's claim for a schedule award as the medical evidence did not support any permanent impairment of the right leg attributable to her January 29, 2009 injury.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,² and its implementing federal regulations,³ 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used.⁵

In addressing lower extremity impairments, the sixth edition requires identifying 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).⁶ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁷

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.⁸

ANALYSIS

The Office accepted appellant's claim for a right knee injury on January 29, 2009 for which she underwent surgery on June 8, 2009. The Board finds that the evidence of record is insufficient to establish that appellant sustained permanent impairment of her right leg under the protocols of the sixth edition of the A.M.A., *Guides*.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.* at § 10.404(a).

⁵ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁶ A.M.A., *Guides* 494-531; see *J.B.*, 61 ECAB ____ (Docket No. 09-2191, issued May 14, 2010).

⁷ A.M.A., *Guides* 521.

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

On November 16, 2009 the Office requested that appellant's treating physician, Dr. Rushford, submit a report in which he addressed whether appellant had permanent impairment of her right leg. Dr. Rushford did not respond. Appellant did not submit any other medical reports from a physician addressing whether the accepted injury caused permanent impairment to her right leg.

The Office referred appellant for a second opinion examination with Dr. Khariton, Board certified in physical medicine and rehabilitation. In a January 29, 2010 report, he reviewed appellant's history of injury and medical treatment. Dr. Khariton examined appellant and determined that she had no impairment of the right leg. He noted an essentially normal examination of the right knee with no edema or erythema and full range of motion. Appellant had no right knee instability, or pain with palpation of the right lateral or medial knee aspects and normal motor strength. She exhibited normal reflexes, which were symmetrical in both knees and ankles, no ankle clonus and a normal gait. Dr. Khariton advised that appellant had and a normal clinical examination with no permanent impairment under the A.M.A., *Guides*. On March 1, 2010 the Office medical adviser reviewed Dr. Khariton's findings and concurred that there was no objective basis for an impairment rating of the right lower extremity.

The Board finds that Dr. Khariton's opinion constitutes the weight of the medical evidence. Dr. Khariton submitted a thorough report based upon a complete and accurate factual and medical history. He performed a comprehensive evaluation and found no evidence of permanent impairment of the right leg due to the accepted conditions or surgery. The Office properly denied appellant's claim for a schedule award as there is no probative medical evidence to establish that appellant sustained permanent impairment of her right leg.

As noted, the Office evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Appellant has the burden of proof to submit medical evidence to establish that she has permanent impairment of a scheduled member of the body.⁹ Based on the medical evidence of record, she has not established entitlement to a schedule award.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a schedule award.

⁹ See *Annette M. Dent*, 44 ECAB 403 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 10, 2010 is affirmed.

Issued: February 2, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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