

By decision dated January 8, 2002, the Office issued a schedule award for a 21 percent right leg permanent impairment. The period of the award was 60.48 weeks from March 15, 2001.

Appellant underwent a right total knee replacement surgery on March 27, 2002. By report dated August 11, 2003, an Office medical adviser opined that a total knee replacement with a good result was a 37 percent leg impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The medical adviser also noted there was a seven percent left leg impairment due to arthritic changes resulting in a three-millimeter cartilage interval.

In a decision dated October 1, 2003, the Office issued a schedule award for an additional 16 percent to the right leg, and 7 percent to the left leg. The period of the awards was 66.24 weeks commencing February 27, 2003.

On April 3, 2007 appellant underwent left knee arthroscopic surgery. In a report dated November 14, 2007, the attending orthopedic surgeon, Dr. Robert Di Ulio, provided results on examination. With respect to the right knee, he stated that appellant had previously been assessed “a 54 percent permanent partial disability and I see no reason to change that number at this time.”¹ Dr. Di Ulio stated that the left knee had previously been assessed a 10 percent permanent disability due to a torn medial meniscus, but following the surgery he would now find a 15 percent left leg disability.

The Office referred the medical evidence to an Office medical adviser. In a report dated December 17, 2007, the medical adviser noted that left knee x-rays showed moderate degenerative arthritis. He found a 20 percent permanent leg impairment for a two-millimeter cartilage interval under the A.M.A., *Guides*. The medical adviser also found 2 percent leg impairment for partial medial meniscectomy, for a 22 percent left leg impairment.

In a decision dated February 13, 2008, the Office granted appellant a schedule award for an additional 15 percent left leg permanent impairment. The period of the award was 43.20 weeks from June 6, 2004.

By report dated March 9, 2009, Dr. Di Ulio provided results on examination of the right knee, noting 1+ medial and lateral laxity and 2+ anterior/posterior laxity. He reported excellent range of motion, with x-rays showing excellent position of the components with no evidence of loosening or breakage. Dr. Di Ulio diagnosed satisfactory total knee replacement and slight laxity in all planes. He again stated that appellant had a 54 percent permanent disability to his right knee.

The Office referred the evidence to an Office medical adviser. In a June 15, 2009 report, the medical adviser determined that under the sixth edition the right leg permanent impairment was 37 percent. He explained that, under the sixth edition, Table 16-3, a fair result for a total knee replacement was a 37 percent leg impairment.

¹ Dr. Di Ulio did not identify the date of the report containing the prior assessment.

By decision dated July 7, 2009, the Office determined that appellant was not entitled to an additional schedule award.

In a letter dated November 28, 2009, appellant requested reconsideration, arguing that there was a conflict in the medical evidence. He submitted a September 8, 2009 report from Dr. Di Ulio, who provided results on examination of both knees. Dr. Di Ulio diagnosed left knee degenerative arthritis.

In a report dated February 10, 2010, an Office medical adviser opined that appellant's impairment under Table 16-3 of the A.M.A., *Guides* was 37 percent for the right leg and 22 percent for the left leg.

By decision dated February 22, 2010, the Office found appellant was not entitled to an additional schedule award for either lower extremity.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁴

ANALYSIS

Appellant has received schedule awards for 37 percent permanent impairment to the right leg and 22 percent for the left leg. He sought an additional schedule award and submitted reports from Dr. Di Ulio, who opined that appellant had a 54 percent "permanent disability" in the right leg. As noted, for schedule award decisions issued after May 1, 2009 the rating of impairment must be based on the sixth edition of the A.M.A., *Guides*. Dr. Di Ulio did not explain how his ratings conformed to this edition of the A.M.A., *Guides*.

In his November 28, 2009 application for reconsideration, appellant argued there was a conflict in the medical evidence between Dr. Di Ulio and an Office medical adviser.⁵

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ A. *George Lampo*, 45 ECAB 441 (1994).

⁴ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁵ The Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination. 5 U.S.C. § 8123(a).

Dr. Di Ulio's opinion as to a 54 percent permanent impairment is of limited probative value without additional explanation. He did not address how the impairment was calculated or identify any specific tables or figures in the A.M.A., *Guides*. The Board finds that Dr. Di Ulio's opinion as to the degree of impairment is of diminished probative value and not sufficient to create a conflict under 5 U.S.C. § 8123(a).⁶

The June 15, 2009 report from the Office medical adviser noted that, under Table 16-3, a fair result (described as fair position, mild instability and/or mild motion deficit) for a total knee replacement has a default leg impairment of 37 percent for Class 3.⁷ The medical adviser did not adjust the default value. The Board notes that the default value may be adjusted based on grade modifiers for functional history, physical examination and clinical studies.⁸ According to the A.M.A., *Guides*, however, if grade modifiers were used for primary placement in the regional grid, in this case a Class 3 (defined as "severe problem") impairment, then it is not used again in the calculation.⁹ The placement in Class 3 was based on such findings as physical examination, and no evidence was presented as to a net adjustment greater than 37 percent for the right leg. Appellant previously received schedule awards totaling 37 percent for the right leg, therefore no additional impairment was warranted based on the evidence of record.

As to the left knee, Dr. Di Ulio did not provide any findings in the March 9, 2009 report. On September 8, 2009 he again diagnosed degenerative arthritis. According to Table 16-3, a moderate arthritis is a 20 percent (Class 2) impairment.¹⁰ Dr. Di Ulio did not provide a detailed description of the left knee impairment or offer an opinion as to the degree of impairment under the A.M.A., *Guides*. To support a schedule award, the attending physician must include a detailed description of the impairment.¹¹ Appellant previously received schedule awards for a 22 percent left leg impairment, and no probative evidence of a greater impairment was submitted.

Based on the medical evidence of record, the Board finds appellant did not establish a greater permanent impairment than the 37 percent right leg and 22 percent left leg that had previously been issued. Accordingly, the Office properly determined that appellant was not entitled to an additional schedule award.

⁶ See *Mary L. Henninger*, 52 ECAB 408 (2001) (the medical evidence as to the degree of permanent impairment was not based on proper identification and application of specific tables in the A.M.A., *Guides* and was not sufficient to create a conflict under 5 U.S.C. § 8123(a)).

⁷ A.M.A., *Guides* 511, Table 16-3.

⁸ *Id.* at 515.

⁹ *Id.* at 515-16.

¹⁰ *Id.* at 511, Table 16-3.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995). It is appellant's burden of proof to establish a permanent impairment to a scheduled member or function of the body. See *Tammy L. Meehan*, 53 ECAB 229, 230 (2001).

CONCLUSION

The Board finds appellant has not established more than a 37 percent right leg or 22 percent left leg permanent impairment causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 22, 2010 is affirmed.

Issued: January 12, 2011
Washington, DC

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

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

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