

**United States Department of Labor
Employees' Compensation Appeals Board**

P.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Rahway, NJ, Employer**

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**Docket No. 10-1079
Issued: March 24, 2011**

Appearances:
James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 10, 2010 appellant, through his attorney, filed a timely appeal from a January 19, 2010 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

ISSUE

The issue is whether appellant has more than three percent impairment to his right leg.

On appeal appellant, through his attorney, contends that the Office erred in applying the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*). His attorney contends that the fifth edition of the A.M.A., *Guides* should have been utilized.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 19, 2002 appellant, then a 27-year-old carrier, sustained injury to his right knee, while stopping a truck that rolled away with its emergency brake on. On October 22, 2002 the Office accepted his claim for right knee sprain. It paid medical and wage-loss benefits. On November 19, 2002 appellant underwent an arthroscopy with repair of a medial meniscus tear. On July 6, 2004 he underwent a partial anterior horn medial meniscectomy and partial synovectomy.

On March 17, 2009 appellant's attorney requested a schedule award for the right leg. In a February 4, 2009 report, Dr. Arthur Becan, an orthopedic surgeon, diagnosed: (1) tear of right medial meniscus, confirmed on magnetic resonance imaging; (2) status post repair of torn right medial meniscus, November 19, 2002; (3) right saphenous mononeuropathy, confirmed in electromyogram/nerve conduction velocity studies; (4) recurrent tear of right medial meniscus; (5) status post right medial meniscectomy, July 6, 2004; and (6) post-traumatic chondromalacia right patella. Applying the fifth edition of the A.M.A., *Guides*, Dr. Becan found that appellant had a 15 percent impairment of the right leg.²

In a report dated April 26, 2009, an Office medical adviser agreed with Dr. Becan that appellant had 15 percent impairment pursuant to the fifth edition of the A.M.A., *Guides*.

By letter dated December 23, 2009, the Office informed appellant that, effective May 1, 2009, the sixth edition of the A.M.A., *Guides* was applicable for determining permanent impairment and request that he obtains such evaluation from his physician. In a February 4, 2009 medical report, Dr. Becan advised that appellant had three percent impairment of the right lower extremity under the sixth edition of the A.M.A., *Guides*. He noted subjective factors such as complaint of right knee pain and stiffness on a daily basis. There was swelling in the right knee with episodes of locking and instability. Dr. Becan noted that appellant has restrictions in his activities of daily living. He noted several arthroscopic portal scars and mild effusion, with peripatellar tenderness and tenderness along the medial patellar facet. Dr. Becan found crepitus produced on compression of the patellofemoral joint and medial joint line tenderness. He advised that appellant was Class I for the right knee medial meniscectomy using Table 16-3 at page 509 of the A.M.A., *Guides* which indicated two percent impairment. Dr. Becan applied the grade modifiers described in Table 16-5 with analysis provided in Table 16-6 through Table 16-8 and the net adjustment formula.³ He noted a modifier of one for functional history (GMFH) based on a lower extremity activity scale (LEAS) of 34 percent; a modifier of two based on physical examination (observed and palpatory) (GMPE); and a modifier of two for clinical studies (GMCS). Dr. Becan then applied the grade modifiers and determined that appellant was entitled to a net adjustment of two. He rated appellant's impairment to the right lower extremity as three percent.

² Dr. Becan noted that appellant had a Grade IV/V right motor strength deficit quadriceps of 12 percent pursuant to the fifth edition of the A.M.A., *Guides* 532, Table 17-8. He further found that appellant had pain-related impairment of three percent pursuant to the A.M.A., *Guides* 574, Figure 18-1. Dr. Becan noted that this equaled a total impairment of the right lower extremity in the amount of 15 percent.

³ A.M.A., *Guides* 515-21.

The Office referred appellant's case to the Office medical adviser. In a December 30, 2009 report, an Office medical adviser found that Dr. Becan properly applied the A.M.A., *Guides*.

By decision dated January 19, 2010, the Office granted a schedule award for three percent impairment of the right leg.

LEGAL PRECEDENT

The schedule award provision of the Act⁴ and its implementing federal regulations⁵ 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.⁶ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

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).⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰

ANALYSIS

The Board finds that the Office properly applied the sixth edition of the A.M.A., *Guides* to determine the extent of appellant's impairment. Effective May 1, 2009 the Office applied the sixth edition of the A.M.A., *Guides* to calculate awards.¹¹ Appellant contends that the fifth edition of the A.M.A., *Guides* should have been used as he requested a schedule award on March 17, 2009 and had reached maximum medical improvement by February 4, 2009. As

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

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); *see also id.* at Chapter 3.700 (January 2010).

⁹ A.M.A., *Guides* at 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

¹⁰ *Id.* at 521.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

noted in *Harry D. Butler*,¹² Congress delegated authority to the Director of the Office regarding the specific methods by which permanent impairment is rated.¹³ Pursuant to this authority, the Director has adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in such adoption. On March 15, 2009 the Director advised that, as of May 1, 2009, all schedule award decisions should reflect use of the sixth edition of the A.M.A., *Guides*.¹⁴ The Board finds that the Office properly applied the sixth edition of the A.M.A., *Guides* in determining appellant's schedule award. The applicable date of the sixth edition of the A.M.A., *Guides* is as of the decision reached. It is not determined by the date a claim is filed or the date of maximum medical impairment as contended on appeal.

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis and then adjusted by grade modifiers according to the above-noted formula. Dr. Becan determined that appellant was Class 1 for the right knee medial meniscectomy pursuant to Table 16-3 on page 509 of the A.M.A., *Guides*, which was two percent impairment. He properly applied the grade modifiers of one for functional history based on LEAS of 34 percent, a modifier of two based on physical examination and a modifier of two for clinical studies. Dr. Becan applied the applicable formula to determine that appellant had a net adjustment of two.¹⁵ He next properly calculated appellant's impairment to his right lower extremity by using the net adjustment of two to determine that appellant had an impairment of three percent of his right lower extremity.¹⁶

The record does not contain any medical evidence that establishes greater impairment in accordance with the sixth edition of the A.M.A., *Guides*. The Board finds that appellant has not established more than three percent impairment to his right leg.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he has more than three percent impairment to his right leg.

¹² 43 ECAB 859 (1992).

¹³ *Id.* at 866 (1992).

¹⁴ *See supra* note 8.

¹⁵ GMFH - CDX (1-1=0). GMPE-CDX (2-1=1). GMCS-CDX (2-1=1). Adding zero plus one plus one yielded a net adjustment of two.

¹⁶ A.M.A., *Guides* 509, Table 16-3; pp. 515-30, Table 16-5, Table 16-8.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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