

FACTUAL HISTORY

On November 25, 2006 appellant, then a 57-year-old maintenance mechanic, tore cartilage in his left knee while climbing on and off a conveyor belt. He stopped work on November 25, 2006 and returned to light duty on December 12, 2006. The Office accepted the claim for a left meniscal tear.

On December 26, 2007 appellant filed a schedule award claim. He submitted an unsigned report dated October 17, 2007 that rated a 30 percent left leg impairment.²

By decision dated January 16, 2008, the Office denied appellant's claim for a schedule award finding that he had not reached maximum medical improvement.

On February 11, 2008 Dr. Anthony L. Parks, a Board-certified orthopedic surgeon, advised that appellant would be scheduled for left knee arthroscopic surgery. On March 5, 2008 he performed a left partial medial meniscectomy and chondroplasty. The Office accepted that appellant sustained a recurrence of disability beginning that day.

In a September 8, 2008 report, Dr. Arthur Becan, an orthopedic surgeon, noted appellant's complaint of intermittent left knee pain, stiffness and episodes of instability and locking. He provided findings on physical examination of mild effusion of the left knee, tenderness in the peripatellar region and along the medial femoral and lateral femoral condyles and the undersurface of the medial and lateral patellar facets. Pain was produced on compression of the patellofemoral joint with no medial or lateral instability and negative Apley's grind test, drawer sign and posterior drop back. Appellant was unable to squat without left knee pain and range of motion was diminished. Gastrocnemius and quadriceps muscle strength testing were graded 3/5 on the left and circumferential measurements of the gastrocnemius was 34 centimeters (cm) on the right and 32 cm on the left with quadriceps measurements of 39 cm on the right and 36 cm on the left. Dr. Becan diagnosed post-traumatic internal derangement of the left knee with medial meniscus tear; post-traumatic chondromalacia to the left patella; status post arthroscopy; and postoperative adhesions of the left knee. He advised that, under the fifth edition of the A.M.A., *Guides*, Table 17-8, appellant had a left quadriceps motor deficit of 17 percent and a left gastrocnemius motor deficit of 25 percent, which combined to total 38 percent left lower extremity impairment. To this, appellant added a pain-related impairment under Figure 18-1 of 3 percent, for a total 41 percent left leg impairment.

On October 9, 2009 Dr. Becan revised his impairment evaluation in accordance with the sixth edition of the A.M.A., *Guides*.³ He advised that appellant had a total three percent impairment of the left lower extremity. Dr. Becan explained that, under Table 16-3, Knee Regional Grid, appellant had a Class 1 impairment for a left knee partial medial meniscectomy, rated as a two percent impairment. He applied the modifiers for functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS) found in Tables 16-6, 16-7 and 16-8,

² The report is on Regional Independent Medical Evaluations letterhead but does not include a physician's signature page.

³ A.M.A., *Guides* (6th ed. 2008).

finding a functional history modifier of one, a physical examination modifier of three and a clinical studies modifier of two. Dr. Becan adjusted the impairment rating, concluding that appellant had a three percent left lower extremity impairment under the sixth edition of the A.M.A., *Guides*.

In a May 13, 2010 report, Dr. Henry J. Magliato, a Board-certified orthopedic surgeon and Office medical adviser, reviewed the medical record including Dr. Becan's October 2009 report. He advised that maximum medical improvement was reached on September 8, 2008, the date of examination by Dr. Becan. Dr. Magliato advised that Dr. Becan properly applied the sixth edition of the A.M.A., *Guides* to find three percent left lower extremity impairment.

By decision dated June 3, 2010, appellant was granted a schedule award for a three percent impairment of the left lower extremity. The award was for a total of 8.84 weeks, from September 8 to November 7, 2008.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ 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, 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 For decisions issued after May 1, 2009, the sixth edition will be used.⁸

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁹ 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).¹⁰ The net adjustment formula is (GMFH-CDX) + (GMPE - CDX) + (GMCS -

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ *Fritz A. Klein*, 53 ECAB 642 (2002).

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

⁹ A.M.A., *Guides*, *supra* note 3 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

¹⁰ *Id.* at 494-531.

CDX).¹¹ 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.¹²

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 medical adviser providing rationale for the percentage of impairment specified.¹³

ANALYSIS

The Board finds that appellant has three percent impairment of the left leg due to his November 25, 2006 injury.

Dr. Becan properly found that, in accordance with Table 16-3, Knee Regional Grid,¹⁴ appellant's impairing diagnosis was a meniscal injury, status post partial medial meniscectomy, which he rated as Class 1, equal to a two percent lower extremity impairment. He applied the modifiers for functional history, physical examination and clinical studies found in Tables 16-6, 16-7 and 16-8.¹⁵ Dr. Becan rated a functional history modifier of one, a physical examination modifier of three and a modifier of two for clinical studies. He applied the net adjustment formula to rate three percent left leg impairment under the sixth edition of the A.M.A., *Guides*.¹⁶ Dr. Becan properly explained his calculations under the sixth edition of the A.M.A., *Guides*. Dr. Magliato, the Office medical adviser, agreed with his analysis. There is no probative medical evidence of record to establish that appellant had a greater impairment than the three percent for which he received a schedule award.

Appellant argued on appeal that, since the date of maximum medical improvement was September 8, 2008, the Office should have used the fifth edition of the A.M.A., *Guides* to rate impairment. The edition the A.M.A., *Guides* to be applied is based on the date of the Office decision, not the date of maximum medical improvement.¹⁷ For any Office schedule award

¹¹ *Id.* at 521.

¹² *Id.* at 23-28.

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹⁴ A.M.A., *Guides*, *supra* note 3 at 509.

¹⁵ *Id.* at 516-19.

¹⁶ *Id.* at 521.

¹⁷ The date of maximum medical improvement is the date the period covered by a schedule award commences. *Albert Valverde*, 36 ECAB 233 (1984). The period of the award is determined by the compensation schedule found at section 8107(c) of the Act. For complete loss of use of the leg, the maximum compensation is 288 weeks. Since appellant's impairment totaled three percent, he is entitled to three percent of 288 weeks or 8.64 weeks of compensation, commencing September 8, 2008.

decision issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used.¹⁸ The schedule award decision in this case was dated June 2, 2010 and was properly based on the sixth edition of the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant did not establish that he has greater than a three percent impairment of the left lower extremity

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁸ *Supra* note 8; *see W.D.*, 61 ECAB ____ (Docket No. 10-274, issued September 3, 2010).