

FACTUAL HISTORY

On January 9, 2007 appellant, then a 39-year-old manager, injured her right forearm, ankle and knee when she slipped on stairs while in travel status.² OWCP accepted the claim for closed fracture of the shaft of the radius and ulna, right knee contusion and right ankle sprain. Appellant stopped on January 9, 2007.

Appellant was initially treated by Dr. Marc J. Lamb, a Board-certified orthopedic surgeon, from January 10 to October 18, 2007, for right forearm and right ankle injuries sustained in a slip and fall accident at work. Dr. Lamb treated her for persistent right knee and ankle pain. He diagnosed right shoulder strain secondary to fall with myofascial symptoms, right knee contusion with reexacerbation of previous chondromalacia patella and right ankle deltoid ligament sprain.

On October 30, 2008 appellant filed a claim for a schedule award. She submitted an August 6, 2008 report from Dr. Arthur Becan, a Board-certified orthopedic surgeon, who provided an impairment rating under the fifth edition of the A.M.A., *Guides*.³ Dr. Becan advised that appellant had 10 percent impairment of the right leg.⁴ He noted appellant was at maximum medical improvement. In an April 16, 2009 report, an OWCP medical adviser concurred in the impairment findings of Dr. Becan.

In a June 15, 2009 letter, OWCP requested that appellant submit an assessment of permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*⁵ which OWCP began using effective May 1, 2009.

Dr. Becan noted that at the August 6, 2008 examination, appellant complained of daily right knee and ankle pain with stiffness, swelling and instability. Appellant reported that her activities of daily living were restricted due to her injuries and she had difficulty with self-care and sleeping. Dr. Becan noted the *QuickDash* disability score was 86 and the lower extremity activity scale (LEAS) was 11/18 for a disability of 39 percent of the right lower extremity. Examination of the right knee revealed no effusion, tenderness along the peripatellar region, the medial and lateral joint line and along the undersurface of the lateral patellar facet, no evidence of medial or lateral laxity, negative anterior drawer sign and range of motion was diminished. Gastrocnemius and quadriceps muscle strength testing was graded 4/5 on the right and circumferential measurements of the gastrocnemius was 43 centimeters (cm) bilaterally. Right ankle examination revealed no effusion, tenderness at the lateral malleolus, lateral ligaments, anterior talofibular ligament and common peroneal tendons and range of motion for dorsiflexion of 10 degrees, plantar flexion of 45 degrees, inversion of 25 degrees and eversion of 30 degrees.

² The employing establishment did not dispute that appellant was in travel status and the time of the incident.

³ A.M.A., *Guides* (5th ed. 2001).

⁴ Dr. Becan also rated right arm impairment. As OWCP has not issued a decision addressing impairment of the right arm, that matter is not presently before the Board in the instant appeal. See 20 C.F.R. § 501.2(c).

⁵ A.M.A., *Guides* (6th ed. 2008).

For the right leg, Dr. Becan diagnosed traumatic chondromalacia patella to the right knee, post-traumatic internal derangement of the right knee, chronic strain and sprain of the right ankle and peroneal tendinopathy to the right ankle. He advised that appellant had six percent right leg impairment under the sixth edition of the A.M.A., *Guides*. Appellant had a class 1 right knee contusion with a grade C default impairment of one percent under Table 16-3, Knee Regional Grid, page 509, of the A.M.A., *Guides*.

Applying the net adjustment formula at pages 521-22 of the A.M.A., *Guides*, Dr. Becan noted that her class 1 impairment indicated a mild problem for the right knee. He found that the grade pursuant to Table 16-6 for functional history was one (for LEAS score of 39 percent) for a mild problem; the grade for physical examination at Table 16-7 was one, for a mild problem (observed and palpatory); and the grade pursuant to Table 16-8 for clinical studies was zero. Dr. Becan utilized the net adjustment formula of (GMFH-CDX) + (GMPE-DCX) + (GMCS-CDX) or $(1-1) + (1-1) + (0-1)$ to find a net adjustment of -1. He adjusted the impairment rating to grade B, which also provides for one percent right leg impairment under the sixth edition of the A.M.A., *Guides*. For right ankle peroneal tendinitis with mild motion deficit, Dr. Becan advised that, in accordance with Chapter 16 of the sixth edition of the A.M.A., *Guides* appellant had five percent impairment of the right leg. Under Table 16-2, Foot and Ankle Regional Grid, appellant had a default impairment of class 1 right ankle peroneal tendinitis with a mild motion deficit which yielded a grade C impairment of five percent pursuant to Table 16-2, page 501 of the A.M.A., *Guides*. Applying the net adjustment formula at pages 521-22 of the A.M.A., *Guides*, Dr. Becan found that appellant had class 1 impairment, the rating utilized for a mild problem for the right ankle. He found that the grade at Table 16-6 for functional history was one (for LEAS score of 39 percent) for a mild problem; the grade for physical examination at Table 16-7 was two, for a moderate problem (observed and palpatory); and the grade at Table 16-8 for clinical studies was zero. Dr. Becan utilized the net adjustment formula of (GMFH-CDX) + (GMPE-DCX) + (GMCS-CDX) or $(1-1) + (2-1) + (0-1)$ to find a net adjustment of zero. This resulted in no change from the default impairment and Dr. Becan of five percent right leg impairment. He combined the two impairments to total six percent of the right leg.

In an October 31, 2009 report, an OWCP medical adviser, reviewed the medical record and agreed with Dr. Becan's findings. He advised that maximum medical improvement was reached on August 6, 2008, the date of examination by Dr. Becan. The medical adviser found that Dr. Becan properly applied the sixth edition of the A.M.A., *Guides* to find six percent right lower extremity impairment.

On April 27, 2010 appellant was granted a schedule award for six percent impairment of the right lower extremity. The period of the award was August 6 to December 4, 2008.

On May 6, 2010 appellant requested a review of the written record and asserted that the schedule award claim should have been developed under the fifth edition of the A.M.A., *Guides*.

In a decision dated August 17, 2010, an OWCP hearing representative affirmed the April 27, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁶ and its implementing federal regulations,⁷ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁸ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁹ For decisions issued beginning May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.¹⁰

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).¹¹ 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).¹² The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹³ The grade modifiers are used on the net adjustment formula described above to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down the default value C, by the calculated net adjustment.¹⁴

ANALYSIS

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.¹⁵ Appellant's accepted diagnosed conditions are for closed fracture of the shaft of the radius and ulna, right knee contusion and right ankle sprain. On April 27, 2010 she was granted a schedule award for six percent permanent impairment of the right lower extremity using the

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.* at § 10.404(a).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

¹⁰ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹¹ A.M.A., *Guides*, 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

¹² *Id.* at 494-531.

¹³ *Id.* at 521.

¹⁴ *Id.* at 497.

¹⁵ *Supra* notes 13-15.

applicable table of the sixth edition of the A.M.A., *Guides*. The section of the A.M.A., *Guides* which rates diagnosis-based impairments for the lower extremities is located at Chapter 16, which states at page 497, Section 16.2a, that impairments are defined by class and grade.

Using the procedure set forth in the A.M.A., *Guides*, Dr. Becan properly found that, in accordance with Table 16-3, Knee Regional Grid,¹⁶ appellant's impairing diagnosis was a right knee contusion, which he rated as class 1, equal to one percent leg impairment. He applied the modifiers for functional history, physical examination and clinical studies found in Tables 16-6, 16-7 and 16-8.¹⁷ Dr. Becan rated a functional history modifier of one, a physical examination modifier of one and a modifier of zero for clinical studies. He applied the net adjustment formula to find one percent right leg under the sixth edition of the A.M.A., *Guides*.¹⁸ For the right ankle, in accordance with Table 16-2, Foot and Ankle Regional Grid,¹⁹ appellant's impairing diagnosis was right ankle peroneal tendinitis, with mild motion deficit, which he rated as class 1, with a default rating of five percent impairment. Dr. Becan applied the modifiers for functional history, physical examination and clinical studies found in Tables 16-6, 16-7 and 16-8.²⁰ He rated a functional history modifier of one, a physical examination modifier of two and a modifier of zero for clinical studies. Dr. Becan applied the net adjustment formula to rate determine that there was no net adjustment which resulted in five percent right leg impairment under the A.M.A., *Guides*.²¹ He noted a total combined lower extremity impairment of six percent.

Dr. Becan properly explained his calculations under the sixth edition of the A.M.A., *Guides*. OWCP's medical adviser, agreed with his analysis. The Board finds that the weight of medical evidence establishes six percent permanent impairment of appellant's right leg. This rating was based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. As the record contains no other impairment evaluation, in conformance with the sixth edition of the A.M.A., *Guides*, showing any greater right leg impairment, the Board will affirmed OWCP's decision.

On appeal, appellant asserts that he has property right in a schedule award benefit under the fifth edition of the A.M.A., *Guides* and a protected property interest cannot be deprived without due process, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathews v. Eldridge*, 424 U.S. 319 (1976). These cases hold only that a claimant who was in receipt of benefits (in

¹⁶ A.M.A., *Guides*, *supra* note 5 at 509.

¹⁷ *Id.* at 516-19.

¹⁸ *Id.*

¹⁹ *Id.* at 501.

²⁰ *Id.* at 516-19.

²¹ *Id.*

Goldberg public assistance, and in *Mathews* Social Security benefits) could not have those benefits terminated without procedural due process.²²

In *Harry D. Butler*,²³ the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.²⁴ On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.²⁵ The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has six percent impairment of the right lower extremity, for which she received a schedule award.

²² In *Mathews* the Court noted that the private interest that would be adversely affected by the erroneous termination of benefits was likely to be less in a disabled worker than a welfare recipient and due process would not require an evidentiary hearing.

²³ 43 ECAB 859 (1992).

²⁴ *Id.* at 866.

²⁵ FECA Bulletin No. 09-03 (March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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