



authorized. A few weeks after surgery, appellant returned to work with restrictions. He resumed his full duties by the end of 2008.

In a decision dated June 22, 2010, OWCP granted a schedule award for two percent impairment of the right lower extremity.<sup>2</sup> It based its decision on the June 18, 2010 report of its district medical adviser, Dr. Morley Slutsky, Board-certified in occupational medicine. The district medical adviser reviewed the case record, including the April 9, 2010 impairment rating of Dr. Alan L. Colledge, a Board-certified family practitioner, who found 10 percent impairment of the right lower extremity.<sup>3</sup> Dr. Colledge's overall impairment included components for mild anterior cruciate ligament (ACL) strain (eight percent) and meniscal tear (two percent). Dr. Slutsky disagreed with the eight percent rating for ACL strain, noting that ACL stability was a consistent clinical finding. Consequently, he recommended only two percent impairment of the lower extremity based on appellant's April 2008 partial medial meniscectomy.

### **LEGAL PRECEDENT**

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>4</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).<sup>6</sup>

FECA provides that, if there is disagreement between the physician making the examination for OWCP and the employee's physician, OWCP shall appoint a third physician who shall make an examination.<sup>7</sup>

### **ANALYSIS**

The case is not in posture for decision due to an unresolved conflict in medical opinion. In its June 22, 2010 decision, OWCP noted that the district medical adviser determined that appellant's physician "incorrectly applied the [A.M.A.,] *Guides* to the findings on examination."

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<sup>2</sup> The award covered a period of 5.76 weeks from April 9 to May 19, 2010.

<sup>3</sup> Dr. Colledge previously examined appellant on May 28, 2009.

<sup>4</sup> For a total loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

<sup>5</sup> 20 C.F.R. § 10.404 (2010).

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

<sup>7</sup> 5 U.S.C. § 8123(a); see 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

Dr. Slutsky, the district medical adviser, disagreed with appellant's physician, Dr. Colledge, regarding the existence and extent of any impairment due to ACL instability. The district medical adviser, acting on behalf of OWCP, may create a conflict in medical opinion.<sup>8</sup> For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."<sup>9</sup>

Contrary to OWCP's finding, Dr. Slutsky did not question whether Dr. Colledge properly applied the sixth edition of the A.M.A., *Guides*, but instead questioned whether the medical evidence overall supported a finding of ACL laxity. He disagreed with Dr. Colledge's eight percent rating for ACL strain, noting that ACL stability was a consistent clinical finding. While Dr. Slutsky may reasonably disagree with respect to the prevalence of ACL laxity, Dr. Colledge conducted the two most recent physical examinations. In both instances, he reported positive anterior drawer with respect to right knee stability. Dr. Slutsky further noted that appellant's March 19, 2008 magnetic resonance imaging scan revealed findings consistent with a mild ACL sprain. Thus, Dr. Colledge's clinical findings lend support to his impairment rating.

The Board finds a conflict in medical opinion as to whether there is impairment based on ACL laxity. The Board finds the reports of Dr. Colledge and Dr. Slutsky of virtually equal weight and rationale. Because there is an unresolved conflict in medical opinion between these two physicians, the case will be remanded to OWCP for referral to an impartial medical examiner. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

### **CONCLUSION**

The case is not in posture for decision.

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<sup>8</sup> 20 C.F.R. § 10.321(b).

<sup>9</sup> *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 22, 2010 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: September 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