

He also contends that appellant sustained ratable injuries of the right upper and left lower extremities. Counsel also argues that OWCP paid appellant compensation at an incorrect pay rate.

FACTUAL HISTORY -- ISSUE 1

OWCP accepted that on November 30, 2007 appellant, then a 56-year-old custodian, sustained a left shoulder sprain, left rotator cuff sprain/strain, aggravation of a torn right medial meniscus and a lumbar sprain when he fell while moving a floor mat. Under a separate claim, it accepted a January 26, 2006 right meniscal tear requiring arthroscopic surgery on February 14, 2006. Following the November 30, 2007 injury, appellant used continuation of pay through January 14, 2008. He returned to modified, sedentary duty for four hours a day on January 15 to March 7, 2008.

In reports from December 4, 2007 to March 6, 2008, Dr. Glenn Zuck, an attending osteopath Board-certified in orthopedic surgery, diagnosed a lumbar strain/sprain, medial and lateral meniscus tears of the right knee and a rotator cuff tear of the left shoulder.²

On January 16 and 18, 2008 Dr. F.J. Delasotta, an attending Board-certified neurosurgeon, diagnosed post-traumatic bursitis of the left shoulder, a right medial meniscus tear, anterior and posterior cruciate ligament tears and L4-5 lumbar radiculopathy causally related to the November 30, 2007 injury. He submitted progress notes through September 4, 2008.

Dr. Zuck performed a right knee arthroscopy on April 1, 2008, with partial medial and lateral meniscectomies, chondroplasty and debridement of a partial tear of the anterior cruciate ligament. Appellant returned to limited duty for four hours a day on April 14, 2008.

On June 13, 2008 Dr. Zuck performed an arthroscopic debridement of the left rotator cuff tear, arthroscopic acromioplasty/bursectomy, release of coracoacromial ligament and anterior labral repair. Appellant returned to part-time light-duty work on June 23, 2008 and to full-time modified duty on September 22, 2008. Dr. Zuck provided permanent work restrictions on October 30, 2008, based on an October 16, 2008 functional capacity evaluation reflecting a sedentary work capacity. He provided periodic progress notes through July 2010.

On April 13, 2009 appellant claimed a schedule award. He submitted a February 6, 2009 impairment evaluation by Dr. Arthur F. Becan, an attending orthopedic surgeon consulting to counsel. Dr. Becan opined that appellant had attained maximum medical improvement. He

² A January 10, 2008 magnetic resonance imaging (MRI) scan of the right knee showed anterior and posterior cruciate ligament tears and a medial meniscal tear. A January 14, 2008 lumbar MRI scan showed a small central L2-3 protrusion, a broad-based L4-5 disc bulge and L5-S1 epidural lipomatosis impinging multiple nerve roots. A January 15, 2008 MRI scan of the left shoulder demonstrated a partial thickness tear of the supraspinatus tendon, labral degeneration and mild acromioclavicular joint arthropathy. A March 21, 2008 lumbar myelogram showed minimal instability at L4-5 without herniation or spinal stenosis.

noted a *QuickDash* score of 59 percent for the left arm. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A., *Guides*"), Dr. Becan found the following impairments of the left upper extremity according to Table 16-40, Figure 16-43 and Figure 16-46³ seven percent for shoulder flexion limited to 80 degrees, five percent for shoulder abduction at 70 degrees, one percent for shoulder adduction at 20 degrees, four percent for internal rotation at 30 degrees and one percent for external rotation at 30 degrees. He added 3 percent impairment due to pain according to Figure 18-1, page 574⁴ to total 21 percent impairment of the left arm. Regarding the right leg, Dr. Becan found a 10 percent impairment for medial and lateral meniscectomy and 17 percent for moderate cruciate laxity according to Table 17-33⁵ and a 9 percent impairment for 4/5 motor strength deficit in the extensor hallucis longus according to Table 15-16 and Table 15-18.⁶ He combined these impairments to equal 32 percent. Dr. Becan added a 3 percent impairment due to pain according to Figure 18-1, resulting in a 35 percent impairment of the right leg. He also found a 12 percent impairment of the left leg, 9 percent due to 4/5 motor strength deficit in the extensor hallucis longus and 3 percent due to pain.

On June 5, 2009 OWCP requested Dr. Becan to submit an impairment rating according to the sixth edition of the A.M.A., *Guides* in effect as of May 1, 2009. Dr. Becan did not respond.

On December 18, 2009 OWCP referred the medical record to OWCP's medical adviser for an impairment rating of the left upper and right lower extremities according to the sixth edition of the A.M.A., *Guides*. In a December 18, 2009 report, OWCP's medical adviser reviewed the medical record and Dr. Becan's February 6, 2009 impairment evaluation. Regarding the left upper extremity, he opined that, according to Table 15-34, page 475, entitled Shoulder Range of Motion, flexion limited to 80 degrees equaled a nine percent impairment, adduction at 70 degrees equaled a six percent impairment, internal rotation at 30 degrees equaled a four percent impairment, external rotation at 30 degrees equaled a two percent impairment and adduction at 20 degrees equaled a one percent impairment. OWCP's medical adviser totaled these impairments to equal 22 percent impairment of the left upper extremity. He stated that there was no additional award recommended for the left arm. Regarding the right lower extremity, OWCP's medical adviser found that, according to Table 16-3, page 509, the Knee Regional Grid, partial medial and lateral meniscectomies equaled a class 1, grade C impairment

³ Table 16-40, page 476 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Flexion and Extension of Shoulder." Figure 16-43, page 477 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Abduction and Adduction of Shoulder." Figure 16-46, page 479 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Internal and External Rotation of Shoulder."

⁴ Figure 18-1, page 574 of the fifth edition of the A.M.A., *Guides* is entitled "Algorithm for Rating Pain-Related Impairment in Conditions Associated with Conventionally Ratable Impairment."

⁵ Table 17-33, page 546 of the fifth edition of the A.M.A., *Guides* is entitled "Impairment Estimates for Certain Lower Extremity Impairments." According to Table 17-33, a partial medial or lateral meniscectomy equals a two percent impairment of the lower extremity.

⁶ Table 15-16, page 424 of the fifth edition of the A.M.A., *Guides*, is entitled "Determining Impairment Due to Loss of Power and Motor Deficits." Table 15-18, page 424 of the fifth edition of the A.M.A., *Guides*, is entitled "Unilateral Spinal Nerve Root Impairment Affecting the Lower Extremity."

with a default value of 10 percent. Dr. Becan observed mild ligamentous laxity, equal to a class 1, grade C impairment with a default value of 10 percent, equaling a Diagnosed Condition impairment class (CDX) of one. OWCP's medical adviser found a grade 1 modifier for Functional History (GMFH) according to Table 16-6⁷ a grade 2 Physical Examination modifier (GMPE) according to Table 16-7⁸ for moderate anterior cruciate laxity, and a grade 1 modifier for Clinical Studies (GMCS) according to Table 16-8.⁹ Using the mathematical formula GMFH-CDX + GMPE-CDX + GMCS-CDX, he calculated that (1-1) + (2-1) + (1-1) resulted in a grade modifier of plus one, adjusting the grade C impairments upward to class D, equaling 12 percent impairment of the right lower extremity.

By decision dated January 14, 2010, OWCP granted appellant a schedule award for a 22 percent impairment of the left upper extremity and a 12 percent impairment of the right lower extremity. The period of the award ran from February 6, 2009 to January 29, 2011.

On January 11, 2010 appellant requested an oral hearing, held on May 17, 2010. At the hearing, he contended that he sustained greater percentages of impairment than those awarded and that there was a conflict of medical opinion between Dr. Becan and OWCP's medical adviser. Following the hearing, counsel submitted a modified-duty job offer appellant accepted on May 20, 2010.¹⁰

By decision dated and finalized July 22, 2010, OWCP's hearing representative affirmed OWCP's January 14, 2010 decision, finding that appellant did not establish that he sustained more than a 12 percent impairment of his right leg and a 22 percent impairment of his left arm. OWCP's hearing representative accorded the weight of the medical evidence to OWCP's medical adviser's interpretation of Dr. Becan's clinical findings. OWCP's hearing representative further found that appellant was compensated at the proper rate, based on his pay rate on November 30, 2007.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA¹¹ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a

⁷ Table 16-6, page 516 of the sixth edition of the A.M.A., *Guides* is entitled "Functional History Adjustment, Lower Extremities."

⁸ Table 16-7, page 517 of the sixth edition of the A.M.A., *Guides* is entitled "Physical Examination Adjustment -- Lower Extremities."

⁹ Table 16-8, page 519 of the sixth edition of the A.M.A., *Guides* is entitled "Clinical Studies Adjustment -- Lower Extremities."

¹⁰ OWCP accepted a recurrence of disability commencing May 20, 2010 when appellant's eight-hour-a-day light-duty position was withdrawn and he began working four hours a day.

¹¹ 5 U.S.C. §§ 8101-8193.

single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.¹² For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.¹³

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).¹⁴ Under the sixth edition, the evaluator identifies the impairment class for the CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.¹⁵ The net adjustment formula is GMFH-CDX + GMPE-CDX + GMCS-CDX.

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left shoulder sprain, left rotator cuff strain, aggravation of a torn right medial meniscus and a lumbar sprain. Appellant claimed a schedule award on April 13, 2009. He submitted a February 6, 2009 impairment rating from Dr. Becan, an orthopedic surgeon consulting to appellant's counsel. Dr. Becan utilized the fifth edition of the A.M.A., *Guides* then in effect to calculate a 21 percent impairment of the left upper extremity based on pain and restricted motion and a 32 percent impairment of the right lower extremity due to ligamentous laxity, weakness and pain. In a June 25, 2009 letter, OWCP requested that he submit an impairment rating according to the sixth edition of the A.M.A., *Guides*, but he did not comply.

OWCP's medical adviser applied the sixth edition of the A.M.A., *Guides* to Dr. Becan's clinical findings. Regarding the left shoulder, he utilized Table 15-34 to calculate that the limitations of flexion, abduction, adduction, external and internal rotation equaled a 22 percent impairment of the left upper extremity with no applicable grade modifiers. Regarding the right knee, OWCP's medical adviser relied on Table 16-3, the Knee Regional Grid, to find a class 1, grade C CDX impairment. He found a grade 1 GMFH, a grade 2 GMPE for anterior cruciate laxity and a grade 1 GMCS. OWCP's medical adviser then used the A.M.A., *Guides* net adjustment formula GMFH-CDX + GMPE-CDX + GMCS-CDX to calculate a grade modifier of plus one, adjusting the grade C CDX to class D, equaling 12 percent impairment of the right lower extremity.

The Board finds that OWCP's medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Becan's clinical findings. Also, there is no medical evidence of record utilizing the appropriate elements of the sixth edition of the

¹² *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹⁴ A.M.A., *Guides* (6th ed. 2008), page 3, Section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

¹⁵ A.M.A., *Guides* (6th ed. 2008), pp. 494-531.

A.M.A., *Guides* demonstrating a greater percentage of permanent impairment. Therefore, OWCP properly relied on its medical adviser's assessment of a 22 percent impairment of the left upper extremity and a 12 percent impairment of the right lower extremity.

On appeal, appellant contends that there was a conflict of medical opinion between Dr. Becan, for appellant and OWCP's medical adviser, for the government that required resolution by an impartial medical specialist. As stated, Dr. Becan did not utilize the appropriate edition of the A.M.A., *Guides*. OWCP's medical adviser provided a thorough report correctly applying the sixth edition of the A.M.A., *Guides* to Dr. Becan's clinical findings. The two opinions are not in conflict as Dr. Becan's opinion was not based on the correct edition of the A.M.A., *Guides*.

On appeal, counsel also asserts that appellant provided unspecified medical evidence establishing permanent impairment to the right upper extremity and left lower extremity due to bilateral lumbosacral radiculopathy. In their reports from December 4, 2007 to July 2010, neither Dr. Zuck, an attending osteopathic physician Board-certified in orthopedic surgery or Dr. Delasotta, an attending Board-certified orthopedic surgeon, noted an injury or impairment to the right arm or left leg. The only medical evidence of record addressing a left lower extremity injury or impairment was Dr. Becan's February 6, 2009 report. Dr. Becan did not provide medical rationale explaining how and why the accepted injuries would cause a left lower extremity injury or impairment. Therefore, his opinion is insufficient to establish that appellant sustained a left lower extremity injury or impairment due to a work-related condition.¹⁶

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.

FACTUAL HISTORY -- ISSUE 2

Following the November 30, 2007 injury, appellant used continuation of pay through January 14, 2008. He returned to modified, sedentary duty for four hours a day on January 15 through March 7, 2008. Appellant did not return to regular duty.

According to the employing establishment's January 30, 2008 responses on a claim for compensation (Form CA-7), appellant's annual pay rate as of November 30, 2007 was \$47,371.00 or \$910.98 a week. OWCP issued wage-loss compensation based on the November 30, 2007 date-of-injury pay rate for intermittent work absences through March 30, 2008.

OWCP accepted a recurrence of disability commencing April 1, 2008; the date appellant underwent surgery for the accepted knee injury. It continued to issue compensation at the November 30, 2007 pay rate for periods of wage loss from April 4 to January 16, 2010.

By decision dated January 14, 2010, OWCP granted appellant a schedule award, to be paid from February 6, 2009 to January 29, 2011 based on the November 30, 2007 date-of-injury

¹⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

pay rate. At an oral hearing held on May 17, 2010, appellant asserted that his pay rate on November 30, 2007 was \$50,541.00 and not \$47,371.00 as the employing establishment noted. OWCP's hearing representative left the record open for 30 days to allow appellant to submit pay stubs corroborating his date-of-injury pay rate.

OWCP continued to pay compensation at the November 30, 2007 date-of-injury pay rate through May 21, 2010. It accepted a recurrence of disability commencing May 20, 2010 when his eight-hour-a-day light-duty position was withdrawn and he began working four hours a day.

By decision dated and finalized July 22, 2010, OWCP's hearing representative found that appellant was compensated at the proper rate, based on his November 30, 2007 date-of-injury pay rate. Appellant did not submit pay stubs as instructed by OWCP's hearing representative.

LEGAL PRECEDENT -- ISSUE 2

Section 8107 of FECA¹⁷ provides that compensation for a schedule award shall be based on the employee's monthly pay.¹⁸ Section 8105(a) of FECA provides: If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, which is known as his basic compensation for total disability.¹⁹

Section 8101(4) of FECA defines monthly pay for purposes of computing compensation benefits as follows: The monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.²⁰ OWCP regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without a new or intervening injury.²¹

In applying section 8101(4), the statute requires OWCP to determine monthly pay by determining the date of the greater pay rate, based on the date of injury, date of disability or the date of recurrent disability. The Board has held that rate of pay for schedule award purposes is the highest rate which satisfies the terms of section 8101(4).²²

¹⁷ 5 U.S.C. §§ 8101-8193.

¹⁸ *Id.* at § 8107.

¹⁹ *Id.* at § 8105(a). Section 8110(b) of FECA provides that total disability compensation will equal three fourths of an employee's monthly pay when the employee has one or more dependents. 5 U.S.C. § 8110(b).

²⁰ *Id.* at § 8101(4). The present case concerns a traumatic injury claim. In an occupational disease claim, the date of injury is the date of last exposure to the employment factors which caused or aggravated the claimed condition. *Patricia K. Cummings*, 53 ECAB 623, 626 (2002).

²¹ 20 C.F.R. § 10.5(x).

²² *Robert A. Flint*, 57 ECAB 369 (2006).

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained left shoulder, right knee and low back injuries on November 30, 2007. Appellant did not return to regular duty after the injury. OWCP accepted an April 1, 2008 recurrence of disability, and continued to issue wage-loss compensation at the date-of-injury pay rate through January 16, 2010. It granted appellant a schedule award on January 14, 2010 for the period February 6, 2009 to January 29, 2011. OWCP also paid the schedule award based on the November 30, 2007 date-of-injury pay rate.

On appeal, counsel contends that appellant was entitled to a recurrent pay rate as of the April 1, 2008 recurrence of disability, when he underwent surgery for the accepted knee injury and stopped work. OWCP accepted that appellant sustained a recurrence of disability on April 1, 2008.²³ However, to be entitled to a recurrent pay rate under 5 U.S.C. § 8101(4), appellant must establish that he sustained a recurrence of disability more than six months after he returned to regular, full-time employment.

Following the November 30, 2007 injuries, appellant did not resume regular, full-time employment. He performed part-time sedentary duty through April 1, 2008 and continuing. As appellant did not resume regular, full-time work after the accepted injuries, he is not entitled to a recurrent pay rate.²⁴

On appeal, counsel also contends that OWCP did not issue compensation at a correct rate as his date-of-injury pay rate was \$50,541.00 a year, not \$47,371.00 as noted by the employing establishment. At the May 17, 2010 hearing, appellant was afforded 30 days to submit pay stubs corroborating his date-of-injury pay rate. However, he did not do so. Appellant has therefore not established that OWCP used an incorrect pay rate in calculating his compensation from January 15 to March 30, 2008.

CONCLUSION

The Board finds that appellant did not establish that he sustained more than a 22 percent permanent impairment of the left upper extremity and a 12 percent impairment of the right lower extremity, for which he received a schedule award. The Board further finds that OWCP issued compensation at the correct pay rate.

²³ *Supra* note 21.

²⁴ 5 U.S.C. § 8101(4); *Jeffrey T. Hunter*, 52 ECAB 503 (2001); *see also L.W.*, Docket No. 10-1425 (issued April 26, 2011).

ORDER

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

Issued: September 21, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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