

FACTUAL HISTORY

On April 8, 2007 appellant, then a 35-year-old Customs and Border Patrol officer, filed a traumatic injury claim alleging that on that day he experienced pain in the interior of his right knee when he wrestled a subject to the ground and fell. OWCP accepted his claim for right knee contusion and lateral tear of right knee meniscus. On December 19, 2007 appellant underwent a right knee arthroscopy and partial lateral meniscectomy.

On March 4, 2009 appellant filed a claim for a schedule award.

In an April 6, 2008 medical report, Dr. Michael S. Setliff, a chiropractor, noted that on April 8, 2007 appellant sustained an injury to his right knee lateral meniscus at work and sought treatment from Dr. Arie Salzman, a Board-certified orthopedic surgeon. Appellant underwent surgery on December 19, 2007. Dr. Setliff reported examination findings and concluded that based on Table 64, page 85 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008) (A.M.A., *Guides*), appellant had one percent whole person impairment as a result of his partial lateral meniscectomy.

On April 21, 2008 appellant submitted a December 19, 2007 surgical report from Dr. Salzman, who diagnosed appellant's condition as right knee injury, lateral meniscus tear, chondromalacia and medial femoral condyle. Dr. Salzman conducted a right knee arthroscopy, partial lateral meniscectomy and chondroplasty on appellant's right knee.

By letter dated March 16, 2009, OWCP requested that appellant submit an impairment evaluation in accordance with the A.M.A., *Guides*, sixth edition. Appellant did not submit any additional medical evidence.

By decision dated November 20, 2009, OWCP denied appellant's claim for a schedule award as the evidence did not establish that he sustained a ratable impairment causally related to his accepted knee conditions.

On March 9, 2010 appellant submitted a request for reconsideration with additional medical evidence. He explained that after receiving OWCP's development letter he contacted his physician, Dr. Arie Salzman, a Board-certified orthopedic surgeon and was referred to Dr. Setliff's office for an impairment rating. Appellant related that Dr. Salzman had conducted surgery on his right knee and had informed him that he had reached maximum medical improvement (MMI). He noted that, although his knee had improved, he still experienced swelling if he walked too much or stood too long.

In a February 9, 2010 report, Dr. Setliff reiterated findings on examination.

In a February 25, 2010 report, Dr. Salzman conducted a follow-up examination for appellant's knee injury and lateral meniscal tear. He observed that appellant's incisions were well healed with some crepitus and positive apprehension sign and dorsalis pedis. Dr. Salzman did not find any instability to the anterior drawer, posterior drawer, varus, valgus and Lachman's test. He noted that appellant's calves were soft and nontender. Dr. Salzman confirmed that appellant had reached MMI. He authorized appellant to return to work with no restrictions.

By decision dated June 21, 2010, OWCP denied modification of appellant's claim finding that the medical evidence failed to establish that he sustained a ratable impairment to his right lower extremity as a result of the April 8, 2007 employment injury. It found that Dr. Setliff's February 9, 2010 medical report was insufficient to support his schedule award claim because he was not a physician as defined under FECA.

On October 23, 2010 appellant submitted a request for reconsideration with additional medical evidence. In an October 21, 2010 letter, Dr. Setliff stated that it was within his scope of practice to evaluate patients for MMI and impairment rating in Texas. He noted that he was certified by the Texas Department of Insurance Division of Workers' Compensation to perform these evaluations. Appellant also resubmitted the December 19, 2007 surgical report.

In a decision dated November 24, 2010, OWCP denied appellant's October 23, 2010 request for reconsideration on the grounds that he failed to provide any new or relevant evidence sufficient to warrant further review of the merits.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA,² and its implementing regulations³ 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.⁴ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁶

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with its medical adviser providing rationale for the percentage of impairment specified.⁷

² *Id.*

³ 20 C.F.R. § 10.404.

⁴ *Id.* at § 10.404(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6(a) (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁶ *Veronica Williams*, 56 ECAB 367, 370 (2005).

⁷ FECA, *supra* note 5, Chapter 2.808.6(d) (January 2010); *Tommy R. Martin*, 56 ECAB 273 (2005).

ANALYSIS -- ISSUE 1

OWCP accepted that on April 8, 2007 appellant sustained a right knee contusion and lateral tear of right knee meniscus, which required surgery. On December 19, 2007 appellant underwent a right knee arthroscopy and partial lateral meniscectomy, performed by Dr. Salzman. On March 4, 2009 he filed a claim for a schedule award. By decisions dated November 20, 2009 and June 21, 2010, OWCP denied appellant's claim because of insufficient medical evidence establishing a permanent impairment causally related to his accepted conditions.

The Board finds that appellant has submitted sufficient evidence to require further development of the schedule award claim.

While appellant submitted reports from his chiropractor, Dr. Setliff, which evaluated appellant's permanent impairment pursuant to the A.M.A., *Guides*, the Board has held that the opinion of a chiropractor, regarding a permanent impairment of a scheduled extremity or other member of the body is beyond the scope of the statutory limitation of a chiropractor's services.⁸ Dr. Setliff's reports are thus of no probative value with regards to the extent of any permanent impairment.

Appellant however also submitted reports to the record from Dr. Salzman. The record contains hospital records documenting appellant's December 19, 2007 partial lateral meniscectomy. The record also contains a February 25, 2010 report, in which Dr. Salzman conducted a follow-up examination regarding appellant's lateral meniscus tear and noted MMI status. According to Table 16-3, page 509, of the A.M.A. *Guides*, a partial meniscectomy either medial or lateral, is rated as at least a one percent impairment of the lower extremity. The Board finds that the record should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of any permanent impairment.⁹

On remand, OWCP should refer the medical evidence to its medical adviser for review. Following this and any further development necessary, it should issue a *de novo* decision. In light of the Board's resolution of the first issue, the second issue is moot.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁸ *Pamela K. Guesford* 53 ECB 726 (2002); *see also George E. Williams*, 44 530 (1993) (a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation and his or her opinion is not considered competent medical evidence in evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine); *see also M.E.*, Docket No 10-2277 (issued June 13, 2011).

⁹ *See Linda Beale*, 57 ECAB 429 (2006); *J.G.*, Docket No. 09-1714 (issued April 7, 2010).

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with the decision of the Board.

Issued: September 7, 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