

**United States Department of Labor
Employees' Compensation Appeals Board**

J.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Mount Pleasant, MI, Employer**

)
)
)
)
)
)
)
)

**Docket No. 11-455
Issued: September 20, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 14, 2010 appellant filed a timely appeal from an October 20, 2010 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

ISSUE

The issue is whether appellant has more than a 21 percent impairment of the right leg for which he received a schedule award.

On appeal appellant generally asserts that he is entitled to the same impairment rating he received for his left lower extremity in 2002.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On November 7, 2001 appellant, then a 52-year-old letter carrier, filed an occupational disease claim alleging that his federal duties caused severe osteoarthritis of the left knee. OWCP accepted aggravation of bilateral osteoarthritis. On April 17, 2002 appellant underwent a left total knee arthroplasty. On October 9, 2003 he was granted a schedule award for a 37 percent impairment of the left lower extremity. Appellant retired in May 2005.

On April 15, 2009 Dr. Matthew B. Colligan, an osteopath, performed a right total knee arthroplasty. On September 21, 2009 appellant filed a schedule award claim. In a September 10, 2009 report, Dr. Colligan advised that appellant had done well postoperatively, had no complaints functionally or pain, and had reached maximum medical improvement. Appellant stated that he was unable to find someone to perform an impairment rating.

OWCP referred appellant to Dr. Michael E. Holda, a Board-certified orthopedic surgeon, for a second-opinion evaluation and impairment rating. In a November 7, 2009 report, Dr. Holda reviewed the medical record and provided findings on examination. He stated that appellant ambulated short distances normally and was able to stand on toes and heels. On examination of the knees, Dr. Holda found no instability or tenderness bilaterally and mild swelling about the left knee. He diagnosed postbilateral total knee arthroplasty. Dr. Holda advised that, in accordance with Table 16-3 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),² appellant had a class 2 impairment, with a modifier of one for functional history and physical examination, and a zero modifier for clinical studies. He concluded that appellant had a 21 percent impairment to each lower extremity.

Dr. Nabil Angley, an OWCP medical adviser who is Board-certified in orthopedic surgery, reviewed Dr. Holda's report and agreed with his assessment that appellant had a 21 percent permanent impairment of each lower extremity.

By decision dated October 20, 2010, appellant was granted a schedule award for a 21 percent right lower extremity impairment, for a total of 60.48 weeks, to run from November 7, 2009 to January 4, 2011. OWCP noted that the 21 percent left lower extremity impairment found by Dr. Holda was less than the 37 percent previously awarded for left lower extremity impairment.

LEGAL PRECEDENT

The schedule award provision of FECA,³ and its implementing federal regulations,⁴ 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

² A.M.A., *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

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.⁵ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.⁶ For decisions issued after May 1, 2009, the sixth edition will be used.⁷

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).⁸ 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).⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ 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.¹¹

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 OWCP's medical adviser providing rationale for the percentage of impairment specified.¹²

ANALYSIS

The accepted conditions are bilateral aggravation of osteoarthritis of the knees. On October 9, 2003 appellant was granted a schedule award for a 37 percent impairment of the left lower extremity. He filed an additional schedule award claim on September 21, 2009. After appellant informed OWCP that he could not find a physician to perform an impairment rating, OWCP referred him to Dr. Holda. In a November 7, 2009 report, Dr. Holda indicated that he had utilized Table 16-3 of the sixth edition of the A.M.A., *Guides* in rating appellant's impairment. He advised that appellant had a class 2 impairment and identified modifiers of one for functional history and physical examination and found no modifier for clinical studies. Dr. Holda concluded that appellant had a 21 percent permanent disability of each lower extremity. Dr. Angley, OWCP's medical adviser, reviewed Dr. Holda's report. He applied the

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

⁹ *Id.* at 494-531.

¹⁰ *Id.* at 521.

¹¹ *Id.* at 23-28.

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

adjustment formula to Dr. Holda's findings and agreed with his conclusion that appellant had a 21 percent impairment of each lower extremity.

The Board finds that their reports constitute the weight of medical opinion. The record does not contain an additional medical report that rates appellant's left lower extremity impairment in accordance with the sixth edition of the A.M.A., *Guides*. Appellant had previously received a schedule award for a 37 percent impairment of the right lower extremity, greater than the 21 percent identified by Dr. Holda. He therefore has not established entitlement to a greater award than the 37 percent awarded on the right by decision dated October 9, 2003, and the 21 percent awarded for the left lower extremity by decision dated October 20, 2010.

As to appellant's argument on appeal, his 2002 schedule award was granted under the fifth edition. The method used in rating impairment for purposes of a schedule award is a matter which rests in the sound discretion of the Director. In the case of *Harry D. Butler*,¹³ the Board addressed OWCP's use of the A.M.A., *Guides* to evaluate impairment since the first edition single volume published in 1971. The Director has adopted the subsequent editions of the A.M.A., *Guides* and stated the specific date when use of each edition should be made applicable to claims under FECA. Appellant has not established that the Director abused the discretion delegated under section 8107 or the implementing federal regulations to make the sixth edition of the A.M.A., *Guides* applicable to all claimants as of May 1, 2009. The fact that the sixth edition revises the evaluation methods used in previous editions does not establish an abuse of discretion. As noted in FECA Bulletin No. 09-03,¹⁴ the American Medical Association periodically revises the A.M.A., *Guides* to incorporate current scientific clinical knowledge and judgment and to establish standardized methodologies for calculating permanent impairment.

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 a 21 percent right lower extremity impairment for which he received a schedule award.

¹³ 43 ECAB 859 (1992).

¹⁴ *Supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 20, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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