

FACTUAL HISTORY

Appellant, a 54-year-old custodian, twisted his right knee on September 27, 2005. He filed a claim for benefits, which OWCP accepted for right knee sprain.

In a December 1, 2008 report, Dr. Jaime M. Sabogal, Board-certified in orthopedic surgery and appellant's treating physician, stated that appellant complained of right knee pain which he attributed to his September 2005 work injury. He stated that appellant underwent total knee replacement surgery in 2002.

On September 3, 2009 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right lower extremity.

In a July 29, 2009 form report, received by OWCP on September 9, 2009, Dr. Sabogal checked a box indicating that appellant's current pain symptoms were attributable to his 2002 total right knee replacement surgery and that he had no residuals stemming from the procedure.

In order to determine whether appellant had any permanent impairment from his accepted September 27, 2005 right knee sprain, OWCP referred appellant to Dr. Manhal A. Ganma, Board-certified in orthopedic surgery, for a second opinion examination and impairment evaluation. In an October 19, 2009 report, Dr. Ganma reviewed the medical history and the statement of accepted facts, stated findings on examination and opined that appellant had no permanent impairment stemming from his September 2005 accepted right knee sprain pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). He stated that appellant underwent a high tibial osteotomy to correct a deformity of his right knee in 1995 and had a subsequent 2003 right total knee surgery.² Dr. Ganma stated that the September 2005 work-related right knee strain resolved and that there were no current objective findings relating to a sprain or strain of the right knee. He further asserted that there was insufficient objective evidence to establish that the September 2005 work injury aggravated or affected the 2003 total knee replacement, which was showing signs of loosening. Dr. Ganma stated that appellant brought x-rays to the examination which documented that he had loosening of the femoral component in 2004, prior to the work injury and there was evidence of osteolysis around the screws, in the upper tibia, particularly the medial one that predated the September 2005 employment injury. He advised that there was a need for a revision of his knee replacement because of the significant osteolysis present, in the tibia around the previously inserted screws, but that this was not related to the 2005 work injury. Dr. Ganma opined that appellant had reached maximum medical improvement with regard to the 2005 right knee sprain.

In a May 7, 2010 impairment evaluation, an OWCP medical adviser adopted Dr. Ganma's findings and conclusions. He stated that appellant reached maximum medical improvement as of November 27, 2005, as his diagnosed condition of right knee sprain/strain was the result of a relatively minor trauma to the knee which would be expected to resolve within approximately eight weeks. OWCP's medical adviser noted that appellant had no

² The record is ambiguous as to whether the right knee replacement occurred in 2002 or 2003. Dr. Sabogal, who performed the surgery, stated that it occurred in 2002.

objective findings or diagnoses which would provide him with an impairment rating under Table 16-3, page 509, which rates lower extremity impairments for knee conditions.

By decision dated June 24, 2010, OWCP found that appellant had no ratable impairment of the right lower extremity causally related to his accepted right knee condition and therefore was not entitled to a schedule award.

By letter dated July 6, 2010, appellant requested an oral hearing, which was held on October 5, 2010. He did not submit any additional medical evidence.

By decision dated December 15, 2010, an OWCP hearing representative affirmed the June 24, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.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

ANALYSIS

In the instant case, OWCP accepted a condition of right knee sprain. The record also supports that appellant had a preexisting right knee condition stemming from a deformity of his right knee which was corrected by a 1995 high tibial osteotomy and a subsequent 2002 right total knee surgery. The Board notes that there is no specific provision for rating impairment based on strains or sprains in the A.M.A., *Guides*. This does not warrant the conclusion that such an award is precluded. The Board routinely reviews schedule award claims for which the accepted condition is sprain or strain and has recognized that a sprain/strain may result in a permanent impairment.⁷ However, appellant has to establish impairment to a scheduled member caused by the accepted condition before an impairment due to a preexisting condition can be assessed.⁸

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

⁵ *Id.*

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

⁷ *C.H.*, Docket No. 08-2246 (issued May 15, 2009).

⁸ *See generally Thomas P. Lavin*, 57 ECAB 353 (2006).

The instant record is not sufficient to establish that appellant has a permanent impairment caused by his accepted right knee strain. Dr. Sabogal, his treating physician, stated that appellant complained of right knee pain which he attributed to his September 2005 work injury. He opined in his July 29, 2009 form report that appellant's current pain symptoms were attributable to his 2002 total right knee replacement surgery and that he had no residuals stemming from the procedure. Dr. Ganma advised that there was insufficient objective evidence to establish that the September 2005 work injury aggravated or affected the 2002 total knee replacement, which was showing signs of loosening. He noted x-ray findings from 2004 which showed that appellant had loosening of the femoral component at that time, with evidence of osteolysis around the screws in the upper tibia, which predated the September 2005 employment injury. However, while Dr. Ganma recommended revision of the knee replacement due to this deterioration and loosening, he opined that this was not related to the 2005 work injury. He concluded that appellant had no ratable impairment and had reached maximum medical improvement from his September 2005 right knee sprain. An OWCP medical adviser reviewed Dr. Ganma's report in a May 10, 2010 impairment evaluation and properly found that appellant had no permanent impairment stemming from his accepted right knee sprain.

There are no reports of record to show an impairment rating sufficient to entitle appellant to a schedule award. Appellant has submitted no other medical evidence indicating that he has impairment to his right lower extremity. The Board will affirm OWCP's December 15, 2010 decision, which affirmed the June 24, 2010 decision denying a schedule award for the right lower extremity.

CONCLUSION

The Board finds that appellant has not sustained any permanent impairment to his right knee causally related to his accepted right knee sprain, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 29, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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