



## **FACTUAL HISTORY**

OWCP accepted that on May 21, 2010 appellant, then a 64-year-old census enumerator on a temporary-duty assignment, sustained a split depression lateral tibial plateau fracture when she fell down steps, landing on her right knee.<sup>2</sup> Appellant stopped work on May 21, 2010. On May 27, 2010 she underwent open reduction and internal fixation of a right tibial plateau fracture with fixation of the lateral tibial plateau split depression fracture with cancellous bone allografting.” Appellant participated in physical therapy through September 2010.

Appellant’s position expired prior to August 11, 2010. She claimed compensation for total disability from July 6 to December 29, 2010. OWCP issued wage-loss compensation for the period July 6 to October 5, 2010.

Dr. Chinedu Nwosa, an attending orthopedic surgeon, submitted progress reports through September 2010 holding appellant off work. He released her to limited duty on October 6, 2010, with lifting limited to 10 pounds and no kneeling, stooping, twisting, bending or climbing. In a December 29, 2010 report, Dr. Nwosa related appellant’s complaints of intermittent moderate right knee pain. On examination, he found a one- to two-degree limitation of extension and 120 degrees flexion, without swelling or other abnormalities on palpation. X-rays showed excellent alignment. Dr. Nwosa released appellant to full duty with no restrictions.

In a January 25, 2011 letter, OWCP authorized total disability compensation from July 6 to October 5, 2010. It advised appellant that additional evidence was needed to establish total disability for work from October 6 to December 29, 2010. OWCP afforded her 30 days to submit such evidence.

By decision dated January 28, 2011, OWCP denied appellant’s claims for wage-loss compensation from October 6 to December 29, 2010 as the medical evidence established that she was capable of working full duty during that period.<sup>3</sup>

In February 5 and 8, 2011 letters received by OWCP on February 9, 2011, appellant requested a review of the written record. She stated that she felt able to perform sedentary office work as of October 6, 2010 but could not have resumed work as a census enumerator if the job were still available. Appellant submitted May and June 2010 physical therapy notes and a June 11, 2010 home care report. OWCP received these documents on January 31, 2011.

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<sup>2</sup> May 21, 2010 x-rays showed a comminuted intra-articular fracture of the lateral tibial plateau with fracture fragment displacement and compression, a nondisplaced fracture of the right fibular head and neck and hemarthrosis in the suprapatellar bursa. A May 21, 2010 computerized tomography (CT) scan of the right knee showed extensive fractures of the lateral and medial tibial plateaus with dramatic comminution.

<sup>3</sup> On its face, OWCP’s January 28, 2011 decision directed that “continuing partial disability be TERMINATED effective January 28, 2011” as the medical evidence established that she was capable of returning to full duty. (Emphasis in the original.) The Board notes, however, that the use of the term “terminated” was inadvertent as appellant did not receive continuing compensation on the daily or periodic rolls. The context of the evidence, including OWCP’s development of the second issue in the case, clearly demonstrates that OWCP intended to deny wage-loss compensation for a claimed period.

By decision dated February 28, 2011, OWCP denied appellant's claim for wage loss for the period October 6 to December 29, 2010 on the grounds that the medical record did not establish total disability for the claimed period. It found that Dr. Nwosa released her to limited duty on October 6, 2010, demonstrating that she was no longer totally disabled for work. OWCP further found that appellant did not respond to its January 25, 2011 letter.

On March 8, 2011 appellant claimed a schedule award. In a March 18, 2011 letter, OWCP advised her to obtain an impairment rating from her attending physician utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a March 24, 2011 letter, appellant requested a review of the written record. She asserted that she responded to OWCP's January 25, 2011 request for additional evidence by submitting February 5 and 8, 2011 letters and copies of physical therapy notes.

In an April 4, 2011 report, Dr. Nwosa found that appellant reached maximum medical improvement on December 29, 2010. Referring generally to the fifth edition of the A.M.A., *Guides*, he found a three percent permanent impairment of the right leg.

On April 14, 2011 OWCP referred Dr. Nwosa's April 4, 2011 report, a statement of accepted facts and the medical record to an OWCP medical adviser for an impairment rating. In an April 17, 2011 report, the medical adviser reviewed the medical record and concurred that appellant reached maximum medical improvement as of December 29, 2010. Referring to Table 16-3<sup>4</sup> of the sixth edition of the A.M.A., *Guides*, he noted a class 1 diagnosis-based impairment (CDX) due to a nondisplaced tibial plateau fracture with abnormal examination findings. From the range of three to seven percent, he assigned the default value of five percent. Referring to Table 16-6,<sup>5</sup> the medical adviser found a grade modifier for Functional History (GMFH) of zero, as appellant did not have an antalgic gait. Referring to Table 16-7,<sup>6</sup> the medical adviser found no grade modifier for Physical Examination (GMPE) as appellant had essentially full range of right knee motion, without swelling or other abnormalities on palpation. Referring to Table 16-8,<sup>7</sup> the medical adviser assigned a grade modifier of 1 for Clinical Studies (GMCS) as postsurgical x-rays showed an essentially healed fracture but extensive hardware was retained. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (0-1) + (0-1) + (1-1), the medical adviser found a net adjustment of -2, warranting no increase in the CDX default value. He, therefore, found three percent impairment of the right lower extremity.

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<sup>4</sup> Table 16-3, pages 509-511 of the sixth edition of the A.M.A., *Guides* is entitled "Knee Regional Grid [lower extremity impairment]."

<sup>5</sup> Table 16-6, pages 516 of the sixth edition of the A.M.A., *Guides* is entitled "Functional History Adjustment -- Lower Extremities."

<sup>6</sup> Table 16-7, page 517 of the sixth edition of the A.M.A., *Guides* is entitled "Physical Examination Adjustment -- Lower Extremities."

<sup>7</sup> Table 16-8, pages 519-20 of the sixth edition of the A.M.A., *Guides* is entitled "Clinical Studies Adjustment -- Lower Extremities."

By decision dated April 19, 2011, OWCP issued appellant a schedule award for a three percent impairment of the right lower extremity. The period of the award ran from December 29, 2010 to February 27, 2011.

By decision dated May 16, 2011, an OWCP hearing representative affirmed OWCP's January 28, 2011 decision. The hearing representative found that there was insufficient medical evidence to establish any further injury-related disability.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provisions of FECA 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 OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>8</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.<sup>9</sup>

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).<sup>10</sup> Under the sixth edition, 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).<sup>11</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained a right lateral tibial plateau fracture. Appellant claimed a schedule award on March 8, 2011. In support of her claim, she submitted an April 4, 2011 report from Dr. Nwosa, an attending orthopedic surgeon, who referred generally to the fifth edition of the A.M.A., *Guides* in finding a three percent impairment of the right lower extremity.

In an April 14, 2011 report, an OWCP medical adviser applied the sixth edition of the A.M.A., *Guides* to Dr. Nwosa's findings. The medical adviser found a class 1 diagnosis-based impairment (CDX) due to the accepted fracture according to Table 16-3. He assigned a default

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<sup>8</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>9</sup> 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).

<sup>10</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008), page 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

<sup>11</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008), pp. 494-531.

value of five percent. The medical adviser determined a grade modifier of zero for (GMFH), according to Table 16-6 and (GMPE) according to Table 16-7, as appellant had very minimal findings on examination and no antalgic gait. He used Table 16-8 to assign a grade 1 modifier for (GMCS) due to mild abnormalities visible on x-rays. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (0-1) + (0-1) + (1-1), an OWCP medical adviser found a net adjustment of -2, lowering the default CDX value of five percent to three percent. Based on the medical adviser's opinion, OWCP issued an April 19, 2011 schedule award for three percent impairment of the right lower extremity.

The Board finds that an OWCP medical adviser used the appropriate portions of the correct edition of the A.M.A., *Guides* to determine the three percent impairment. There is no probative medical evidence of record substantiating a greater percentage of impairment. Therefore, the April 19, 2011 schedule award is proper under the law and facts of this case.

### **LEGAL PRECEDENT -- ISSUE 2**

Under FECA, the term "disability" is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.<sup>12</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>13</sup> Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>14</sup> The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

OWCP accepted that appellant sustained a right tibial plateau fracture. Appellant claimed compensation for total disability for the period July 6 to December 29, 2010. In a January 25, 2011 letter, OWCP advised appellant to submit additional evidence regarding her condition from October 6 to December 29, 2010.

OWCP initially denied compensation for the claimed period by decision dated January 28, 2011. Appellant then responded to OWCP's January 25, 2011 request by submitting her February 5 and 8, 2011 letters asserting continued disability from October 6 to December 29, 2010. She also submitted physical therapy and home care notes. By decision dated February 28, 2011, OWCP denied wage-loss compensation from October 6 to December 29, 2010 as appellant's attending physician released her to light duty on

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<sup>12</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>13</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>14</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>15</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

October 6, 2010. It found that she did not respond to its January 25, 2011 letter. Thereafter, by decision dated May 16, 2011, a hearing representative affirmed OWCP's finding that the medical evidence did not establish further injury-related disability.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between the accepted right leg injury and her claimed total disability from October 6 to December 29, 2010.<sup>16</sup> In an attempt to meet her burden of proof, she responded to OWCP's January 25, 2010 request for additional information by submitting February 5 and 8, 2011 letters, physical therapy notes and a home care report. OWCP received these documents on January 31 and February 9, 2011. Yet, in its February 28, 2011 decision, OWCP found that appellant failed to respond to its January 25, 2011 letter and did not discuss appellant's letters or the other documents submitted. Similarly, the hearing representative's May 16, 2011 decision did not clearly address this evidence.

As the Board's decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.<sup>17</sup> In this instance, OWCP failed to consider relevant evidence it received prior to the issuance of the February 28, 2011 decision. As it failed to address all relevant evidence before it at the time of its decision, the case is remanded for a proper review of the evidence and issuance of an appropriate *de novo* final decision.<sup>18</sup>

### **CONCLUSION**

The Board finds that appellant has not established that she sustained more than a three percent impairment of the right lower extremity, for which she received a schedule award. The Board further finds that the case is not in posture for a decision regarding whether appellant was totally disabled for work from October 6 to December 29, 2010.

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<sup>16</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>17</sup> 20 C.F.R. § 501.6(d); *see William A. Couch*, 41 ECAB 548 (1990).

<sup>18</sup> *Willard McKennon*, 51 ECAB 145 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 16, February 28 and January 28, 2011 denying compensation from October 6 to December 29, 2010 are set aside, and the case remanded to OWCP for additional development and issuance of an appropriate decision. OWCP's April 19, 2011 schedule award decision is affirmed.

Issued: April 12, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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