



## **FACTUAL HISTORY**

On February 12, 2010 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim, alleging that he tripped and hit his knees while going up steps. On July 6, 2010 Dr. Andrew Kuntz, chief resident in orthopedics, performed arthroscopic repair of torn medial and lateral meniscus tears of the left knee. In a September 2, 2010 report, Dr. David H. Stern, an attending physician, advised that appellant could return to his usual occupation. Appellant returned to full duty in September 2010. In a November 14, 2010 report, Dr. John Esterhai, a Board-certified orthopedic surgeon, advised that, following surgery, appellant had complete resolution of his left knee pain and could work without restrictions. On December 13, 2010 OWCP accepted as employment-related bilateral contusions of the knees and lower leg, and left lateral and medial meniscus tears.

On December 28, 2010 appellant filed a schedule award claim. By letter dated January 4, 2011, OWCP informed him of the medical evidence needed to support his schedule award claim. In a March 29, 2011 decision, it denied the schedule award claim on the grounds that appellant submitted no medical evidence to support an impairment rating.

On May 6, 2011 appellant, through his attorney, requested reconsideration and submitted a January 25, 2011 report in which Dr. David Weiss, an osteopath, provided left knee examination findings and advised that appellant had a lower extremity activity scale (LEAS) score of 34 percent. Dr. Weiss diagnosed post-traumatic internal derangement to the left knee with medial and lateral meniscus tears, post-traumatic chondromalacia patella to the left knee, and status post arthroscopic surgery on July 6, 2010. He advised that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),<sup>2</sup> under Table 16-3, appellant had a class 1 impairment left knee impairment, with a default rating of 10 percent. Dr. Weiss found that, under Table 16-6, Table 16-7 and Table 16-8, appellant had a functional history score of 1, physical examination score of 2, and a clinical studies score of 2. He then applied the net adjustment formula and concluded that appellant had a 13 percent left lower extremity impairment.

In a June 17, 2011 report, Dr. Christopher R. Brigham, an OWCP medical adviser who is Board-certified in family and preventive medicine, advised that the date of maximum medical improvement was January 25, 2011, the date of Dr. Weiss' evaluation. He further found that the objective findings of record did not support the impairment rating found by Dr. Weiss. Dr. Brigham agreed that, under Table 16-3, appellant had a class 1, 10 percent impairment. He also agreed with Dr. Weiss that appellant had a physical examination modifier of 2. Dr. Brigham, however, disagreed with Dr. Weiss' modifier under functional history, finding a zero impairment, noting that Dr. Weiss reported that appellant ambulated with a symmetrical gait. He also disagreed with Dr. Weiss' grade modifier for clinical studies, finding that a grade modifier for clinical studies was not applicable because no postsurgical diagnostic studies had been performed. Dr. Brigham then applied the net adjustment formula and concluded that appellant had a 10 percent left lower extremity impairment.

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

On July 11, 2011 OWCP vacated the March 29, 2011 decision, and granted appellant a schedule award for a 10 percent impairment of the left lower extremity, for a total of 28/80 weeks, to run from January 25 to August 14, 2011.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>3</sup> and its implementing federal regulations,<sup>4</sup> 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.<sup>5</sup> For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<sup>7</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>8</sup> 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).<sup>9</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>10</sup> 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.<sup>11</sup>

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 the medical adviser

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.* at § 10.404(a).

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

<sup>7</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>8</sup> 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."

<sup>9</sup> *Id.* at 494-531.

<sup>10</sup> *Id.* at 521.

<sup>11</sup> *Id.* at 23-28.

providing rationale for the percentage of impairment specified.<sup>12</sup> In determining entitlement to a schedule award, preexisting impairment to the scheduled member is to be included.<sup>13</sup>

### ANALYSIS

Appellant argues on appeal that Dr. Brigham's report was not prepared by a physician. Dr. Brigham's report quoted language found in section 2.3a of the sixth edition of the A.M.A., *Guides*, which states:

“It must be emphasized, however, than even though the [A.M.A.,] *Guides* is mainly written by and for medical doctors, nonphysician evaluator may analyze an impairment evaluation to determine if it was performed in accordance with the [A.M.A.,] *Guides*.”<sup>14</sup>

He stated that “this impairment evaluation was reviewed by a physician involved in the development and writing of the [s]ixth [e]dition.” Dr. Brigham signed the report and appellant submitted no probative evidence to show that the June 17, 2011 report was not prepared by Dr. Brigham.<sup>15</sup>

The Board, nonetheless, finds this case is not in posture for decision because a conflict in medical evidence has been created between the opinions of Dr. Weiss and Dr. Brigham. The physicians agreed that, under Table 16-3, Knee Regional Grid, appellant's partial medial and lateral meniscus tears yielded a class 1 impairment with a default value of 10 percent. They also agreed that he had a grade modifier of 2 for physical examination. The physicians, however, disagreed regarding the grade modifiers for functional history and clinical studies. The Board finds that Dr. Brigham supported his opinion that the clinical studies modifier was not applicable in this case because the record contains no postsurgical diagnostic studies. Nonetheless, regarding functional history, Dr. Weiss found a grade modifier of 1, based on appellant's LEAS score; Dr. Brigham found a zero impairment, noting that Dr. Weiss reported that appellant ambulated with a symmetrical gait.

Section 16.1a of the A.M.A., *Guides* provides that a proper functional history enables the physician to assess the impact of a given condition on basic function of the limb for activities of daily living, and the physician is expected to grade this impact.<sup>16</sup> By applying the net adjustment formula, using no modifier for clinical studies, Dr. Weiss' total impairment rating, including his functional history grade modifier of 1, would be 12 percent, whereas Dr. Brigham, with no grade modifier for functional history, would remain at 10 percent.

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

<sup>13</sup> *Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>14</sup> *Supra* note 2 at 23.

<sup>15</sup> See *E.H.*, Docket No. 11-985 (issued December 19, 2011).

<sup>16</sup> *Supra* note 2 at 496.

If there is disagreement between OWCP's medical adviser and the employee's physician, OWCP will appoint a third physician who shall make an examination.<sup>17</sup> For a conflict to arise, the opposing physician's viewpoints must be of virtually equal weight and rationale.<sup>18</sup> The Board finds the opinions of Dr. Weiss and Dr. Brigham to be of equal weight as to the grade modifier for functional history. The Board will set aside the July 11, 2011 schedule award decision and remand the case for OWCP to refer appellant to an impartial medical specialist to resolve the conflict. After such further development as it deems necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds the case is not in posture for decision as a conflict in medical evidence has been created.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 11, 2011 decision of the Office of Workers' Compensation Programs be vacated and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: April 10, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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<sup>17</sup> 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

<sup>18</sup> *Darlene R. Kennedy*, 57 ECAB 414 (2006).