

osteocondral effect, aggravation of patellofemoral arthritis of the left knee, permanent aggravation of osteoarthritis of the left medial compartment and a consequential closed spiral fracture of the left distal femur. It authorized several left knee surgeries between 2002 and 2009, including a partial medial meniscectomy and two total left knee replacements.

In a September 9, 2008 decision, OWCP granted appellant a schedule award for a 50 percent permanent impairment of her left leg.

Appellant claimed entitlement to a greater amount of schedule award compensation and submitted October 28 and November 3, 2010 reports in which Dr. Vincent Kiesel, an attending Board-certified orthopedic surgeon, indicated that she had a 100 percent impairment of her right leg. Dr. Kiesel referenced Table 13-12 (Station and Gait Disorders) on page 336 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) as well as Table 16-10 (Impairment Values Calculated From Lower Extremity Impairment) on page 530.

On November 5, 2010 Dr. James W. Dyer, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, reviewed the reports of Dr. Kiesel and provided an opinion that appellant had a 59 percent permanent impairment of her left leg. He discussed appellant's medical history and stated:

“The claimant now walks with a limp and permanent cane and has 12 degrees valgus deformity. The [attending physician] assigned a [schedule award] of 100 percent [left lower extremity (LLE)] but did not use the A.M.A., *Guides* [sixth edition] correctly and used the wrong table to determine [whole person impairment] that was converted to impairment LLE in the amount of 100 percent [permanent impairment] LLE.

“Based on the correct use of the A.M.A., *Guides* [sixth edition], the impairment LLE equals 59 percent minus 50 percent (already paid) equals 9 percent additional impairment LLE.”

In a December 22, 2010 decision, appellant was granted an additional schedule award for a nine percent permanent impairment of her left leg.

Appellant requested a telephone hearing before an OWCP hearing representative. During the April 20, 2011 hearing, her counsel argued that Dr. Dyer did not adequately explain the basis for his impairment rating or the reason why Dr. Kiesel's impairment rating was improper.

In a June 28, 2011 decision, OWCP's hearing representative affirmed OWCP's December 22, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA² 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 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.⁴ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁵

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁶

ANALYSIS

In the present case, OWCP accepted that appellant sustained several work-related conditions relating to her left knee and leg. It authorized several left knee surgeries between 2002 and 2009, including a partial medial meniscectomy and two total left knee replacements.

Appellant received schedule awards compensating her for a total left leg impairment of 59 percent. She claimed that she was entitled to a greater amount of schedule award compensation but OWCP denied her claim for an increased award. In support of her claim, appellant submitted a November 3, 2010 report in which Dr. Kiesel, an attending Board-certified orthopedic surgeon, indicated that she had a 100 percent impairment of her right leg.

OWCP based its schedule award determination on the November 5, 2010 report of Dr. Dyer, a Board-certified orthopedic surgeon serving as an OWCP medical adviser. The Board finds, however, that Dr. Dyer did not adequately explain the basis for his impairment rating or the reason why Dr. Kiesel's impairment rating was improper. Dr. Dyer acknowledged that appellant walked with a limp and permanent cane and had a valgus deformity, but he did not adequately explain why it was inappropriate for Dr. Kiesel to apply Table 13-12 (Station and Gait Disorders) on page 336 of the sixth edition of the A.M.A., *Guides*. Dr. Dyer did not clearly explain why he felt that she only had a 59 percent impairment of her left leg.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.*

⁵ FECA Bulletin No. 09-03 (issued March 15, 2009)

⁶ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

For these reasons, the case shall be remanded to OWCP for further development of the medical evidence regarding the extent of appellant's left leg impairment. After such development it deems necessary, OWCP shall issue an appropriate decision regarding this matter.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has more than a 59 percent permanent impairment of her left leg, for which she received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: April 17, 2012
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