

On January 29, 2009 Dr. Don B. Miskew, Board-certified in orthopedic surgery, performed a partial medial meniscectomy procedure on appellant's right knee. He stated that she had a bucket handle tear of the posterior two-thirds of the medial meniscus. Dr. Miskew noted that the anterior cruciate ligament was found to be intact. He advised that the lateral compartment was essentially normal for a person of appellant's age.

On January 20, 2010 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right lower extremity.

In a February 1, 2010 report, Dr. Miskew stated that "secondary to her injury to her right knee which required essentially a total meniscectomy for a bucket-handle tear" appellant had a seven percent disability of her right lower extremity. He rendered his impairment rating pursuant to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a report dated March 10, 2010, an OWCP medical adviser indicated that Dr. Miskew's February 1, 2010 report did not constitute a sufficient basis for a schedule award because he stated that appellant essentially underwent a total meniscectomy on January 29, 2009, despite the fact that the operative report states that he underwent a partial meniscectomy in which he removed two-thirds of the meniscus. In addition, OWCP's medical adviser stated that Dr. Miskew's impairment rating was improper because he cited the fourth edition of the A.M.A., *Guides*. He did find, however, that appellant reached maximum medical improvement as of February 1, 2010, the date of Dr. Miskew's examination. OWCP's medical adviser determined that appellant had a two percent permanent impairment of the right lower extremity for a partial meniscectomy based on Dr. Miskew's January 29, 2009 operative report, pursuant to Table 16-3, page 509 of the A.M.A., *Guides*, which outlines impairment rating based on a partial meniscectomy, under a class 1 impairment.²

By decision dated March 19, 2010, OWCP granted appellant a two percent award for the right lower extremity for the period February 1 to March 13, 2010, for a total of 5.76 weeks of compensation.

In a May 30, 2010 report, Dr. William N. Grant, Board-certified in internal medicine, found that appellant had a 19 percent impairment of his right lower extremity under the A.M.A., *Guides*. He stated that on examination appellant had a flexion contracture which he measured at five degrees, yielding a 10 percent lower extremity impairment pursuant to Table 16-23 of the A.M.A., *Guides*, and flexion to 90 degrees, which rated a 10 percent lower extremity impairment at Table 16-23. Dr. Grant noted that he obtained the prior diagnosis of meniscus tear during a telephone conversation with appellant.

In a report dated February 4, 2011, an OWCP medical adviser found that Dr. Grant's May 30, 2010 report did not constitute a sufficient basis to modify appellant's schedule award. He stated that an impairment rating based on loss of range of motion was not valid unless: (a) the range of motion was calculated at the time maximum medical improvement was attained; (b) the applicability of a range of motion impairment had been rigorously considered, as

² A.M.A., *Guides* 509.

discussed at section 16.7 of the A.M.A., *Guides*; and (c) the relevant history was obtained by a review of medical records reflecting past medical history and the patient's presentation of the medical history, as set forth at section 2.7 of the A.M.A., *Guides*.³

By decision dated March 31, 2011, OWCP denied modification of its March 19, 2010 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing regulations⁵ 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.⁶ 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.⁷

ANALYSIS

In its March 19, 2010 decision, OWCP granted appellant a schedule award for a two percent right lower extremity impairment based on a partial meniscectomy, relying on Table 16-3 of the A.M.A., *Guides*. The Board notes that the A.M.A., *Guides* directs examiners to rate diagnosis-based impairments for the lower extremities pursuant to Chapter 16, which states at page 497, section 16.2a that impairments are defined by class and grade. In accordance with this section the examiner is instructed to utilize the net adjustment formula outlined at pages 521-22 of the A.M.A., *Guides*, to obtain the proper impairment rating. OWCP's medical adviser determined that appellant's partial meniscectomy should be rated as a two percent impairment, as a class 1 impairment, with no adjustment factors, pursuant to Table 16-3.

Appellant subsequently sought an additional award and requested reconsideration. In support of his request, he submitted Dr. Grant's February 9, 2010 report indicating that appellant had a 19 percent right lower extremity impairment based on loss of range of motion in her right knee, pursuant to Table 16-23 of the A.M.A., *Guides*. OWCP's medical adviser reviewed this

³ The Board notes that OWCP medical adviser determined that Dr. Grant's report was of diminished credibility for the further reason that he obtained his range of motion calculations by telephone; the Board disagrees with this interpretation of Dr. Grant's report. Dr. Grant clearly indicates in the report that he obtained his results through "Physical Examination."

⁴ 5 U.S.C. § 8107.

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

⁶ *Id.*

⁷ *Veronica Williams*, 56 ECAB 367, 370 (2005).

report and properly found that it did not warrant an additional schedule award. The Board notes that section 16.7 of the A.M.A., *Guides*, at page 543, states that section 16.2, which pertains to diagnosis-based impairment, is the method of choice for calculating lower extremity impairment; range of motion is used principally as a factor in the adjustment grid for physical examination. Section 16.7 states: “This section is to be used as a stand-alone rating when other grids refer you to this section or no other diagnosis-based sections of this chapter are applicable for impairment rating of a condition.”

This principle is reiterated in the summary at Chapter 16.8, page 552 of the A.M.A., *Guides*, which states: “12. Only if no other approach is available to rating, calculate impairment based on range of motion, as explained in [s]ection 16.7.”

Based on the principle outlined above, the Board finds that the medical evidence of record supports OWCP’s award for a two percent permanent impairment based on the diagnosis of a partial meniscectomy, pursuant to the sixth edition of the A.M.A., *Guides*.

The only other impairment rating in the record was that of Dr. Miskew, who found in his February 1, 2010 report that appellant had a seven percent right lower extremity impairment. This report is of diminished probative weight, however, as he based this rating upon an incorrect diagnosis of total meniscectomy and an outdated edition of the A.M.A., *Guides*.⁸ OWCP properly found that the opinion of OWCP’s medical adviser constituted sufficient medical rationale to support OWCP’s March 19, 2010 schedule award decision. As appellant did not submit any medical evidence to support an additional schedule award greater than the two percent for the right lower extremity already awarded, the Board will affirm OWCP’s March 31, 2011 decision.

Appellant may request an increased schedule award, at any time, 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 no more than a two percent permanent impairment of the right lower extremity, for which she received a schedule award.

⁸ The Board further notes that a description of appellant’s impairment must be obtained from appellant’s physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. See *Peter C. Belkind*, 56 ECAB 580, 585 (2005).

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 16, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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