

**United States Department of Labor  
Employees' Compensation Appeals Board**

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L.S., Appellant	)	
	)	
and	)	<b>Docket No. 11-1596</b>
	)	<b>Issued: February 3, 2012</b>
<b>DEPARTMENT OF THE NAVY, SURFACE</b>	)	
<b>WARFARE CENTER, Philadelphia, PA,</b>	)	
<b>Employer</b>	)	

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*Appearances:*  
Appellant, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 28, 2011 appellant filed a timely appeal from a May 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than an eight percent permanent impairment to his left leg.

**FACTUAL HISTORY**

On February 26, 2009 appellant, then a 53-year-old quality assurance specialist, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries on February 24, 2009 in the performance of duty when he tripped while walking up steps. OWCP accepted the claim for

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

sprains of the left knee, groin and hip, as well as cervical sprain/strain. Appellant underwent left knee medial meniscectomy surgery on June 4, 2009.

In a report dated December 29, 2009, Dr. David Weiss, an osteopath, provided a history and results on examination. He indicated in his history that a March 2, 2009 magnetic resonance imaging (MRI) scan showed a large effusion and radial tear of the medial meniscus. Dr. Weiss noted tenderness along the medial patellar facet and medial joint line. As to permanent impairment, he opined that appellant had a 10 percent permanent impairment to the left leg under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Weiss identified Table 16-3, with a diagnosis of primary knee joint arthritis. Using the default leg impairment of seven percent, he adjusted the impairment to nine percent, assigning a grade modifier of 2 for each of the adjustments: functional history; physical examination and clinical studies. In addition, Dr. Weiss identified Table 16-4 for left hip bursitis and found appellant had a one percent impairment.

OWCP referred the case to an OWCP medical adviser for review. In a report dated June 11, 2010, the medical adviser opined that appellant had a seven percent leg impairment. The medical adviser concurred with Dr. Weiss that Table 16-3, with a diagnosis of primary knee arthritis, was applicable. However, the medical adviser found a grade modifier of 1 for functional history and physical examination, citing the results of the examination by Dr. Weiss. The medical adviser also found that a clinical studies modifier was not applicable as there were no current studies. According to the medical adviser, the leg impairment was the default impairment of seven percent. The date of maximum medical improvement was December 29, 2009.

By decision dated July 1, 2010, OWCP issued a schedule award for a seven percent left leg permanent impairment. The period of the award was 20.16 weeks of compensation commencing December 29, 2009.

Appellant requested a hearing before an OWCP hearing representative, which was held on October 27, 2010. By decision dated December 29, 2010, the hearing representative remanded the case for further development. The hearing representative stated that the medical adviser did not fully explain why the grade modifiers used by Dr. Weiss were incorrect and the case was remanded for clarification.

In a report dated January 7, 2011, an OWCP medical adviser indicated that there was an additional one percent impairment for the left hip, if he must use Dr. Weiss' findings. The medical adviser reiterated his opinion as to grade modifiers for functional history and physical examination. Dr. Weiss noted the physical findings and the standards for application of the grade modifiers.

By decision dated January 25, 2011, OWCP issued a schedule award for an additional one percent permanent impairment to the left leg. The period of the award was 2.88 weeks.

Appellant requested a review of the written record by an OWCP hearing representative. By decision dated May 16, 2011, the hearing representative affirmed the January 25, 2011 decision.

## LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</sup> Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>3</sup> OWCP procedures provide that, effective May 1, 2009, all schedule awards are to be calculated under the sixth edition of the A.M.A., *Guides*.<sup>4</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to its medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.<sup>5</sup>

With respect to a knee impairment, the A.M.A., *Guides* provides a regional grid at Table 16-3.<sup>6</sup> The class of impairment (CDX) is determined based on specific diagnosis, and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for Functional History (GMFH) Table 16-6, Physical Examination (GMPE) Table 16-7 and Clinical Studies (GMCS) Table 16-8. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>7</sup>

## ANALYSIS

Appellant submitted a December 29, 2009 report from Dr. Weiss, who opined that appellant had a 10 percent left leg impairment. Dr. Weiss found a nine percent impairment under Table 16-3, and a one percent impairment under Table 16-4.<sup>8</sup>

An OWCP medical adviser reviewed the evidence and that he agreed with Dr. Weiss in identifying Table 16-3 with a diagnosis of primary knee joint arthritis. A class 1 impairment has a default value of seven percent impairment for the leg. As noted above, the default value may

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<sup>2</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>3</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>4</sup> FECA Bulletin No. 09-03 (March 15, 2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

<sup>6</sup> A.M.A., *Guides* 509, Table 16-3.

<sup>7</sup> The net adjustment is up to +2 (grade E) or -2 (grade A).

<sup>8</sup> Table 16-4 is the hip regional grid, and provides a one percent default (grade C) impairment for bursitis with consistent palpatory findings.

be adjusted by assigning grade modifiers and applying the adjustment formula. Dr. Weiss assigned a grade of 2 for GMFH, GMPE and GMCS, but he did not provide any explanation as to how he chose the grade modifiers.

An OWCP medical adviser did provide a detailed explanation of why he chose a grade modifier of 1 for GMPE and GMFH, and why he felt GMCS was not applicable. For example, a GMFH 2 under Table 16-6, refers to an antalgic limp, routine use of cane or crutch or positive Trendelburg test.<sup>9</sup> The medical adviser explained there was no evidence of any of these factors in the medical evidence. As to GMPE, grade 2 is for a grade 2 Lachman's test and moderate laxity patellar mechanism. Dr. Weiss indicated that Lachman's test was negative and the medical adviser explained that physical findings corresponded to a grade 1. Regarding clinical studies, the medical adviser explained that this was not applicable as there were no current studies regarding the diagnosis. Again, Dr. Weiss provided no additional explanation for assigning a grade modifier 2 for GMPE, GMFH and GMCS.

Weighing the medical evidence, the Board finds that OWCP's medical adviser provided a rationalized medical opinion as to the application of Table 16-3 that represents the weight of the evidence. Using the adjustment formula noted above, there is no adjustment from the default value of seven percent to the left leg. Both Dr. Weiss and the medical adviser found a one percent additional impairment under Table 16-4 for a class 1 bursitis.<sup>10</sup> The default leg impairment is one percent and with the assigned grade modifiers there was no adjustment.<sup>11</sup> Therefore the weight of the evidence supports a finding that appellant had an eight percent left leg impairment.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant's impairment was eight percent, he is entitled to eight percent of 288 weeks, or 23.04 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.<sup>12</sup> In this case OWCP's medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Weiss. The award therefore properly runs for 23.04 weeks commencing on December 29, 2009.

On appeal, appellant felt he should have a 10 percent impairment as his symptoms were painful and he will eventually need a knee replacement. But the degree of permanent impairment is based on application of the A.M.A., *Guides*. In this case, OWCP's medical adviser explained his specific application of the grade modifiers to Table 16-3, while Dr. Weiss did not provide additional explanation. Based on the weight of the medical evidence, an award greater than an eight percent leg impairment has not been established. Appellant may request an

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<sup>9</sup> A.M.A., *Guides* 516, Table 16-6.

<sup>10</sup> *Id.* at 512, Table 16-4.

<sup>11</sup> Dr. Weiss found a GMFH of 2, GMPE of 1, and GMCS 0. Applying the net adjustment formula there is no adjustment from grade C.

<sup>12</sup> *Albert Valverde*, 36 ECAB 233, 237 (1984).

increased schedule award based on medical evidence showing progression of an employment-related condition resulting in an increased impairment.

**CONCLUSION**

The Board finds the evidence does not establish more than an eight percent permanent impairment to the left leg.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 16 and January 25, 2011 are affirmed.

Issued: February 3, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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