

Appellant received compensation from OWCP for periods of disability. On July 6, 1995 Dr. Michael Okin, an attending Board-certified orthopedic surgeon, performed an open arthrotomy and medial and lateral meniscectomies on appellant's left knee. On November 21, 1995 he performed a valgus osteotomy on appellant's left knee. These procedures were authorized by OWCP.

In 1996, appellant began participating in OWCP-sponsored vocational rehabilitation efforts and he was sent to school to study computers. In September 1997, he began working as a network technician for a private employer, but he was laid off from his job in mid 2003. Appellant continued to receive compensation benefits for periods of disability.

In an April 14, 2004 report, Dr. Okin described appellant's left leg condition and indicated that a combination of factors affected his impairment rating. He noted that appellant had advanced degenerative osteoarthritis of his left knee, 4/5 weakness of his quadriceps, antalgic gait on the left side, loss of flexion of 35 degrees and a need for ancillary support for any long distance travel. Dr. Okin indicated that he was providing an impairment rating under the standards of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) and stated, "Putting all these factors together I would give [appellant] a 40 percent impairment of the [left] lower extremity which comes out to a 16 percent impairment of the whole man."

On May 11, 2004 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, reviewed the medical evidence of record, including the April 14, 2004 report of Dr. Okin and determined that appellant had 30 percent permanent impairment of his left leg under the fifth edition of the A.M.A., *Guides*. He found that, under Table 17-33 on page 546, appellant had 25 percent impairment of his left leg due to his osteotomy and 7 percent impairment due to his medial meniscectomy. Dr. Berman used the Combined Values Chart on page 604 to find that combining these values equaled a total left leg impairment of 30 percent.

In a May 25, 2004 decision, OWCP granted appellant a schedule award for 30 percent permanent impairment of his left leg. The award was based on Dr. Berman's evaluation of Dr. Okin's April 14, 2004 report.

On April 18, 2011 Dr. Okin indicated that appellant was unemployable as he had emphysema, morbid obesity, advanced post-traumatic degenerative osteoarthritis of his left knee, advanced osteoarthritis of his right knee and diabetes mellitus with peripheral neuropathy.

Appellant claimed entitlement to additional schedule award compensation and submitted a May 24, 2011 report of Dr. Arthur Becan, an attending Board-certified orthopedic surgeon. In the May 24, 2011 report, Dr. Becan concluded that appellant had a 50 percent permanent impairment of his left leg under the standards of the sixth edition of the A.M.A., *Guides* (6th ed. 2009). He reported the findings of his examination and diagnosed torn medial meniscus of the left knee, torn lateral meniscus of the left knee, status post medial and lateral meniscectomies of the left knee, status post high tibial osteotomy of the left knee and progressive severe arthropathy of the left knee. Dr. Becan noted that May 2011 x-rays of appellant's left knee showed complete loss of the cartilage along the medial compartment with a joint space of one millimeter, advanced osteoarthritis of the patellofemoral joint and moderate arthritis of the lateral compartment with a

joint space of five millimeters.² He found that, under Table 16-3 (Knee Regional Grid) on page 511, appellant had a diagnosis-based left leg impairment of “primary knee joint arthritis” for medial joint space narrowing which fell under class 4 with a default value of 50 percent. Dr. Becan indicated that, under Table 16-6 through Table 16-8 on pages 516-20, appellant had a grade modifier of 4 for Functional History (GMFH) and a grade modifier of 3 for Physical Examination (GMPE), but noted that a grade modifier score was not applicable for Clinical Studies (GMCS). Application of the net adjustment formula yielded a net adjustment of minus one, but moving one space to the left of the 50 percent default value on Table 16-3 still yielded a total left leg impairment of 50 percent.

On September 11, 2011 Dr. Berman, OWCP’s medical adviser, reviewed the medical evidence of record, including the May 24, 2011 report of Dr. Becan, and found that the evidence did not show that appellant had more than a 30 percent permanent impairment of his left leg under the standards of the sixth edition of the A.M.A., *Guides*. He indicated that, under Table 16-3, appellant had a diagnosis-based left leg impairment of “primary knee joint arthritis” for his one millimeter medial cartilage interval which fell under class 3 and stated that he fell under a default value of 30 percent under Table 16-3.³ Dr. Berman indicated that Dr. Becan placed appellant under class 4 but he found that this determination was improper because class 4 was reserved for cases where there was no cartilage interval. He noted that, under Table 16-6 through Table 16-8, appellant had a grade modifier of three for GMFH, a grade modifier of 2 for GMPE and a grade modifier of 3 for GMCS. Application of the net adjustment formula yielded a net adjustment of minus one and moving one space to the left of the 30 percent default value on Table 16-3 yielded a total left leg impairment of 28 percent. Dr. Berman concluded that the medical evidence did not show that appellant had more than a 30 percent permanent impairment of his left leg.

In an October 3, 2011 decision, OWCP determined that appellant did not meet his burden of proof to establish that he has more than a 30 percent permanent impairment of his left leg. It found that Dr. Berman properly pointed out that Dr. Becan made an error in his impairment rating.

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

² The record contains a radiologist’s impression of left knee x-rays obtained on May 3, 2011.

³ Dr. Berman considered appellant’s left leg impairment due to lateral joint space narrowing but determined that this approach would yield a lesser left leg impairment.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.⁷

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.⁸ After the class for diagnosed condition (CDX) is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for GMFH, grade modifier for GMPE and grade modifier for GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁹ 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.¹⁰

ANALYSIS

OWCP accepted that, due to a December 21, 1981 injury, appellant sustained a tear of the medial meniscus of his left knee and traumatic arthritis of his left knee. In a May 25, 2004 decision, it granted him a schedule award for a 30 percent permanent impairment of his left leg.

Appellant claimed entitlement to additional schedule award compensation and submitted a May 24, 2011 report of Dr. Becan, an attending Board-certified orthopedic surgeon. The Board finds that appellant did not show that he was entitled to a rating of more than 30 percent permanent impairment of his left leg, for which he had already received a schedule award.

In his May 24, 2011 report, Dr. Becan concluded that appellant had a 50 percent permanent impairment of his left leg under the standards of the sixth edition of the A.M.A., *Guides*.¹¹ He found that, under Table 16-3, appellant had a diagnosis-based left leg impairment of “primary knee joint arthritis” for medial joint space narrowing which fell under class 4 and had a default value of 50 percent. Dr. Becan indicated that appellant had a grade modifier of 4 for GMFH and a grade modifier of 3 for GMPE and that application of the net adjustment formula yielded a net adjustment of minus one. He noted that moving one space to the left of the 50 percent default value on Table 16-3 still yielded a total left leg impairment of 50 percent.

⁶ *Id.*

⁷ See FECA Bulletin No. 9-03 (issued March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

⁸ See A.M.A., *Guides* (6th ed. 2009) 509-11.

⁹ *Id.* at 515-22.

¹⁰ *Id.* at 23-28.

¹¹ The sixth edition of the A.M.A., *Guides* was the appropriate edition to apply at this time. See *supra* note 7.

On September 11, 2011 Dr. Berman, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, reviewed the May 24, 2011 report of Dr. Becan and properly found that his report did not show that appellant had more than 30 percent permanent impairment of his left leg under the standards of the sixth edition of the A.M.A., *Guides*. He indicated that, under Table 16-3, appellant had a diagnosis-based left leg impairment of “primary knee joint arthritis” for his one millimeter medial cartilage interval which fell under class 3 and he found that appellant fell under a default value of 30 percent under Table 16-3. Dr. Berman pointed out that this class was only warranted when there was no cartilage interval which was not the situation with this claimant.¹² His determinations that appellant had a grade modifier of 3 for GMFH, a grade modifier of 2 for GMPE and a grade modifier of 3 for GMCS were in accordance with the medical evidence of record. Dr. Becan indicated that appellant had a grade modifier of 4 for GMFH, but this rating would not be warranted as appellant was not entirely nonambulatory. He also found a grade modifier of 3 for GMPE, but this was not appropriate as appellant only had slight laxity of his left patellar mechanism. *See* A.M.A., *Guides* 516-17, Table 16-6 and Table 16-7. Dr. Berman applied the net adjustment formula, noting that it yielded a net adjustment of minus one and required moving one space to the left of the 30 percent default value on Table 16-3. This calculation yielded a total left leg impairment of 28 percent and, therefore, the medical evidence did not show that appellant had more than a 30 percent permanent impairment of his left leg.

For these reasons, appellant has not shown that he has more than a 30 percent permanent impairment of his left leg and OWCP properly denied his claim for additional schedule award compensation.

Appellant may request a schedule award or increased schedule award 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 did not meet his burden of proof to establish that he has more than a 30 percent permanent impairment of his left leg, for which he received a schedule award.

¹² *See* A.M.A., *Guides* 511, Table 16-3.

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board