

right leg osteoarthritis and right chondromalacia patella. Appellant underwent right knee arthroscopic surgery on May 31, 2001.

By decision dated October 29, 2002, OWCP issued a schedule award for a two percent permanent impairment to the right leg. The period of the award was 5.76 weeks from August 16, 2002.

On December 7, 2006 appellant again underwent right knee arthroscopic surgery. He submitted a claim for an additional schedule award. OWCP referred appellant to Dr. Matthew Mitchell, an orthopedic surgeon, for a second opinion evaluation. In a report dated June 4, 2000, Dr. Mitchell provided a history and results on examination. By report dated July 13, 2007, OWCP's medical adviser noted that Dr. Mitchell found weakness in the quadriceps and hamstring muscles. The medical adviser opined that under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A. *Guides*) appellant had a 23 percent right leg permanent impairment based on the muscle weakness. According to the medical adviser, an alternate method using a diagnosis-based estimate would result in a lesser impairment of 15 percent.

By decision dated July 25, 2007, OWCP issued a schedule award for an additional 21 percent permanent impairment to the right leg. The period of the award was 60.48 weeks from May 4, 2007.

In a report dated May 12, 2010, Dr. George Barakat, an orthopedic surgeon, advised that appellant underwent additional right knee arthroscopic surgery on that date. Appellant again sought an additional schedule award on July 8, 2010. OWCP requested that Dr. Barakat provide an opinion as to permanent impairment under the sixth edition of the A.M.A. *Guides*, but he noted in a report received on November 8, 2010 that he did not perform impairment ratings.

OWCP referred appellant to Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated May 27, 2011, Dr. Swartz provided a history and results on examination. He opined that, under Table 16-3 of the A.M.A. *Guides*, appellant had a seven percent right leg impairment based on knee joint arthritis. Dr. Swartz noted that grade modifiers for Clinical Studies (GMCS) showed a residual joint space measurement of three millimeters in the right knee. He found no adjustment from the default value based on grade modifiers for Functional History (GMFH) and grade modifiers for Physical Examination (GMPE).

In a report dated September 5, 2011, OWCP's medical adviser indicated that there would be a seven percent impairment for knee joint arthritis. The medical adviser also indicated that appellant would have a 3 percent impairment for patellofemoral arthritis or a 10 percent right leg impairment.

By decision dated October 31, 2011, OWCP found appellant was not entitled to an additional schedule award. It found that the medical evidence did not establish more than the 23 percent right leg permanent impairment previously awarded.

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.⁴ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ 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*.⁶ A claimant who has received a schedule award calculated under a previous edition and who claims an increased award, will receive a calculation according to the sixth edition for any decision issued on or after May 1, 2009.⁷

With respect to a knee impairment, the A.M.A., *Guides* provides a regional grid at Table 16-3 for diagnosis-based knee impairments.⁸ The class of impairment diagnosed condition (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 GMFH, Table 16-6, GMPE, Table 16-7 and GMCS, Table 16-8. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁹

ANALYSIS

OWCP accepted that appellant sustained right knee internal derangement, right torn meniscus, right leg osteoarthritis and right chondromalacia patella as a result of the October 5, 2000 employment incident. Appellant underwent three right knee surgeries on May 31, 2001, December 7, 2006 and May 12, 2010. OWCP has issued two schedule awards for a combined 23 percent permanent impairment to the right leg for the October 5, 2000 employment injuries. Appellant seeks an increased schedule award beyond the 23 percent previously awarded.

² *Id.* at § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

⁵ *Supra* note 3.

⁶ FECA Bulletin No. 09-03 (March 15, 2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010).

⁷ *Id.*

⁸ A.M.A., *Guides* 509, Table 16-3. The A.M.A., *Guides* note that a diagnosis-based impairment is the primary method of evaluation for the lower extremities. *Id.* at 497.

⁹ The net adjustment is up to +2 (grade E) or -2 (grade A).

The medical evidence of record does not establish permanent impairment greater than the 23 percent previously awarded. Dr. Barakat, the attending physician, did not provide an opinion on the issue. OWCP referred appellant to Dr. Swartz, who found that appellant had a seven percent right leg impairment under Table 16-3. As noted, this is the appropriate table for a diagnosis-based impairment for the leg. Under this table, the default (grade C) impairment for primary knee joint arthritis at class 1 (three mm cartilage interval, full-thickness articular cartilage defect or ununited osteochondral fracture) is seven percent. Dr. Swartz applied grade modifiers of one for GMFH and GMPE, noting that GMCS would not be applicable.¹⁰ Applying the formula noted above, there is no adjustment from the grade C value of seven percent.

OWCP's medical adviser concurred with respect to the diagnosis of knee joint arthritis resulting in a seven percent leg impairment. In addition, the medical adviser used the diagnosis of patellofemoral arthritis, with a grade C impairment for class 1 of three percent. There was no adjustment based on the net adjustment formula. The Board notes that the A.M.A., *Guides* state that in most cases only one diagnosis will be appropriate.¹¹ While the medical adviser did not discuss the issue, both of the diagnoses used are under the general diagnosis of arthritis under Table 16-3. Combining the 7 percent for primary knee joint arthritis and 3 percent for patellofemoral arthritis results in a 10 percent impairment.

Therefore the maximum impairment to the right leg under the sixth edition of the A.M.A., *Guides*, based on the probative evidence of record, is 10 percent. Since appellant already received schedule awards for a 23 percent right leg impairment from the accepted October 5, 2000 employment injuries, there is no evidence of a greater impairment. He may at anytime seek an increased impairment based on the submission of new evidence showing a progression of an employment-related permanent impairment.

CONCLUSION

The Board finds appellant has not established more than a 23 percent employment-related permanent impairment to his right leg.

¹⁰ If a grade modifier was used for the primary placement in the regional grid, it is not used again in the impairment calculation. A.M.A., *Guides* 515-16.

¹¹ A.M.A., *Guides* 497.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 31, 2011 is affirmed.

Issued: June 5, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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