

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

_____)
F.J., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY)
TRANSPORTATION SECURITY)
ADMINISTRATION, Atlanta, GA, Employer)

_____)

Docket No. 12-882
Issued: September 10, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 5, 2012 appellant filed a timely appeal from the September 6, 2011 Office of Workers' Compensation Programs' (OWCP) schedule award decision. Pursuant to the Federal Employees' Compensation Act¹ (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 met his burden of proof to establish that he sustained more than a 25 percent permanent impairment of his right lower extremity for which he received a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 26, 2003 appellant then a 53-year-old transportation security screener, sustained an injury to the right hip after being struck with a passenger's bag. On May 18, 2004 OWCP accepted his claim for right hip trochanteric bursitis. Appellant underwent an authorized right total hip arthroplasty on April 3, 2009.

On November 4, 2010 appellant filed a Form CA-7 claim for a schedule award. On January 24, 2011 OWCP requested that he have his treating physician rate his permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant subsequently submitted a January 20, 2011 report from Dr. John Henry, Jr., a Board-certified orthopedic surgeon and treating physician, who noted seeing appellant for follow up of his right hip surgery. Dr. Henry noted that appellant was doing reasonably well but had redeveloped pain and tenderness over the lateral side of his hip.

On April 13, 2011 OWCP requested that its medical adviser review the medical evidence and rate appellant's permanent impairment under the A.M.A., *Guides*. In an April 13, 2011 report, the medical adviser indicated that the total hip arthroplasty was performed on April 3, 2009 with good results. He requested that OWCP inquire as to when appellant reached maximum medical improvement.

In a June 7, 2011 report, Dr. Henry opined that appellant reached maximum medical improvement in April 2010, about one year postoperatively. He noted examination findings and set forth appellant's activity restrictions. Dr. Henry utilized the A.M.A., *Guides* (5th ed. 2001). He opined that appellant had 15 percent whole person impairment or 37 percent right leg impairment rating for good results from a hip replacement.²

In a June 20, 2011 report, OWCP's medical adviser noted appellant's history of injury and treatment. Under the A.M.A., *Guides* (6th ed. 2009), he referred to Table 16-4,³ and explained that, for a total hip arthroplasty with good results, appellant fell into a class 2 category, with a default grade C or maximum value of 25 percent. The medical adviser also indicated that there was no change to the award with the use of the net adjustment formula. He opined that appellant had 25 percent impairment of the right lower extremity and advised that he reached maximum medical improvement on June 7, 2011.

On September 6, 2011 OWCP granted appellant a schedule award for 25 percent permanent impairment of the right lower extremity. The award covered the period from June 7, 2011 to October 22, 2012.

² Although appellant did not specify which leg, it appears it was the right leg.

³ A.M.A., *Guides* 515.

LEGAL PRECEDENT

Section 8107 of FECA⁴ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2009).

In addressing lower extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁶ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP medical adviser providing rationale for the percentage of impairment specified.⁸

ANALYSIS

In support of his claim for a schedule award, appellant's physician, Dr. Henry, in a report dated June 7, 2011 opined that appellant had 15 percent whole person impairment or 37 percent impairment of the right leg based upon his total knee arthroplasty. He utilized the fifth edition of the A.M.A., *Guides*. As noted above, effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2009). Furthermore, FECA does not provide a schedule award based on whole person impairments.⁹ Board precedent is well settled that when an attending physician's report gives an estimate of impairment which is not based upon the A.M.A., *Guides* OWCP may follow the advice of its medical adviser where he or she has properly applied the A.M.A., *Guides*.¹⁰

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (2009).

⁶ A.M.A., *Guides* (6th ed. 2008), 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

⁷ *Id.* at 515-21.

⁸ *Supra* note 6.

⁹ *See Tania R. Keka*, 55 ECAB 354 (2004); *James E. Mills*, 43 ECAB 215 (1991) (neither FECA, nor its implementing regulations provide for a schedule award for impairment to the body as a whole).

¹⁰ *See Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

By report dated June 20, 2011, OWCP's medical adviser using the report of examination from Dr. Henry discussed the relevant tables in the sixth edition of the A.M.A., *Guides*. He followed the assessment formula of the sixth edition of the A.M.A., *Guides* and referred to Chapter 16, Table 16-4, the hip regional grid.¹¹ The medical adviser noted that appellant would fall under the provision in the table for a total or partial hip replacement, or a class 2 category, with a good result. He selected the C default value, 25 percent impairment. OWCP's medical adviser medical determined the net adjustment formula would not net a higher impairment.¹² He concluded that appellant had an impairment of 25 percent to the right lower extremity. The medical adviser also indicated that appellant reached maximum medical improvement on June 7, 2011.

The Board finds that OWCP's medical adviser's report constitutes the weight of medical opinion. The record does not contain any evidence to establish greater impairment to the right lower extremity in accordance with the sixth edition of the A.M.A., *Guides*. Thus, appellant has not established that he sustained more than a 25 percent impairment of the right lower extremity.

On appeal, appellant submitted arguments in which he disagreed with the amount of his schedule award. He also submitted additional evidence subsequent to the September 6, 2011 decision. The Board has no jurisdiction to review this evidence for the first time on appeal.¹³ 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 has not met his burden of proof to establish that he sustained more than 25 percent permanent impairment of his right leg for which he received a schedule award.

¹¹ A.M.A., *Guides* 515.

¹² The Board notes that the impairment percentage for a class 2 default, grade C, impairment for a partial or total hip replacement with good results, 25 percent, is the same percentage as for a grade E impairment under Table 16-4. *See id.*

¹³ 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 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