

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

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**E.Y., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Milwaukee, WI, Employer**

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**Docket No. 13-1132  
Issued: December 6, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 9, 2013 appellant filed a timely appeal from the March 27, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for an additional schedule award. 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 met his burden of proof to establish that he has more than a 37 percent impairment to each leg, for which he previously received schedule awards.

On appeal, appellant contends that he is entitled to a greater award because he had to retire at any early age, could not bend his knee, run, jog, squat or ride a bike.

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

## **FACTUAL HISTORY**

On November 13, 2004 appellant, then a 45-year-old letter carrier, was surprised by a dog and fell to his knees. On February 7, 2005 OWCP accepted his claim for bilateral chondromalacia of the patella. On May 23, 2007 appellant underwent a bilateral single-stage total knee arthroplasty. On November 3, 2009 OWCP granted schedule awards for a 37 percent impairment to the left and right lower extremities. In a November 1, 2011 letter, it noted that appellant accepted a lump-sum payment of his schedule award, covering the period December 20, 2009 through June 22, 2012.

On July 16, 2012 appellant filed a claim for an additional schedule award, and noted that he was on a retirement disability. In a July 10, 2012 report, Dr. Bruce T. Faure, a Board-certified orthopedic surgeon, stated that the presence of a knee replacement represented a 50 percent total disability of each lower extremity pursuant to the Wisconsin Administrative Code. Appellant had an additional remaining range of motion of 70 degrees bilaterally which accounted for an additional 25 percent disability creating a 75 percent disability to both lower extremities. Dr. Faure listed appellant's restrictions for returning to work. He recommended that appellant see an expert for a full assessment. Dr. Faure opined that the changes in appellant's knees were permanent and he did not expect to see functional improvement over time.

By letter dated August 14, 2012, OWCP advised appellant that it needed further information to determine the extent of impairment. It requested that he provide a rating under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (A.M.A., *Guides*). In response, appellant submitted progress notes dated September 4 and 6, 2012 from Dr. Fauer. Appellant was being treated for a recurrence of bilateral knee pain. He was advised that Dr. Fauer did not provide permanent partial disability ratings under the A.M.A., *Guides* and that he would need to see a specialist.

By decision dated March 27, 2013, OWCP denied appellant's claim for an additional schedule award.

## **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>2</sup> and its implementing regulations,<sup>3</sup> 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 for all claimants, OWCP has adopted the A.M.A.,

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<sup>2</sup> *Id.* at § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

*Guides* as the uniformed standard applicable to all claimants.<sup>4</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.<sup>5</sup>

It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.<sup>6</sup> OWCP procedures provide that to support a schedule award, the medical evidence should establish that the impairment has reached a permanent and fixed state and indicate the date on which this occurred (date of maximum medical improvement). The medical report should describe the impairment in sufficient detail to include, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation and other pertinent description of the impairment. This description 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.<sup>7</sup>

### ANALYSIS

OWCP accepted appellant's claim for bilateral chondromalacia of the patella due to a November 13, 2004 employment-related injury. On November 3, 2009 it granted schedule awards for a 37 percent impairment to appellant's left and right lower extremities. On July 16, 2012 appellant filed a claim for an additional schedule award. OWCP denied this claim for an additional schedule award on March 27, 2013. The Board finds that appellant has not submitted sufficient medical evidence to establish that he has greater impairment to his legs.

Dr. Faure evaluated appellant's permanent impairment under the Wisconsin Administrative Code, not the A.M.A., *Guides* as required for claims under FECA. Dr. Faure did not provide any detailed findings from physical examination that could be relied upon to support an additional award. By letter dated August 14, 2012, OWCP informed appellant of the evidence necessary to establish his claim for an additional schedule award. It specifically requested that he submit an impairment evaluation from an attending physician in accordance with the sixth edition of the A.M.A., *Guides*. The reports from Dr. Faure do not provide any additional detail. It is appellant's burden of proof to establish that he sustained a permanent impairment of a schedule member as a result of an employment injury. The medical evidence must include a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file can clearly visualize the impairment with its resulting restrictions and

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<sup>4</sup> *Id.* at § 10.404(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

<sup>6</sup> *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>7</sup> *D.M.*, Docket No. 11-775 (issued October 11, 2011); *Peter C. Belkind*, 56 ECAB 580 (2005); *Vanessa Young*, 55 ECAB 575 (2004).

limitations.<sup>8</sup> Appellant did not submit such evidence and he did not meet his burden of proof to establish greater impairment to his leg.<sup>9</sup>

Appellant may request a schedule award or an 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 had more than a 37 percent impairment to each lower extremity, for which he previously received schedule awards.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 27, 2013 is affirmed.

Issued: December 6, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>8</sup> *L.H.*, Docket No. 13-288 (issued May 8, 2013).

<sup>9</sup> *V.W.*, Docket No. 09-2026 (issued February 26, 2010); *L.F.*, Docket No. 10-343 (issued November 29, 2010).