

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

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O.A., Appellant )

and )

U. S. POSTAL SERVICE, POST OFFICE, )  
Cleveland, OH, Employer )

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**Docket No. 13-1359  
Issued: December 16, 2013**

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director,*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 20, 2013 appellant filed a timely appeal from the February 19, 2013 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 to review the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish more than 21 percent permanent impairment of his left leg, for which he received a schedule award.

**FACTUAL HISTORY**

On August 4, 2000 appellant, then a 48-year-old mail handler, twisted his left knee while closing a mailbox. He did not initially stop work. On August 24, 2000 appellant slipped on a rubber band and twisted his left knee. He underwent left knee arthroscopy on February 22, 2001

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

and returned to unrestricted duties on July 1, 2001.<sup>2</sup> Appellant returned to full duty on October 31, 2000. OWCP doubled the claims on December 4, 2000. It accepted a left knee strain and left meniscus tear with aggravation of osteoarthritis and chondromalacia. OWCP also accepted an aggravation of left knee strain.

Appellant filed a claim for a schedule award. On November 21, 2001 OWCP granted him a schedule award for two percent permanent impairment of the left leg. The award covered a period of 5.76 weeks from October 5 to November 14, 2001. Appellant requested a review of that decision and on November 22, 2002 the hearing representative affirmed the November 21, 2001 decision. The hearing representative affirmed found that the evidence did not support a greater impairment.

On July 20, 2010 Dr. D. Philip Stickney, a Board-certified orthopedic surgeon, performed an authorized total left knee arthroplasty.

On August 12, 2011 appellant filed a claim for an additional schedule award. OWCP requested Dr. Stickney to provide an opinion on permanent impairment in conformance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (hereinafter, A.M.A., *Guides*) (6<sup>th</sup> ed. 2009).

In a September 1, 2011 report, Dr. Stickney noted appellant's history of injury and treatment. He utilized the fifth edition of the A.M.A., *Guides*. Dr. Stickney noted that, after the July 20, 2010 left total knee arthroplasty, appellant had presumptive arthrofibrosis status post total knee arthroplasty and, on September 23, 2010, received a manipulation under anesthesia. Despite physical therapy postmanipulation, range of motion continued to be difficult and dynasplints were ordered. On March 28, 2011 appellant had full extension and flexion beyond 125 degrees. Dr. Stickney determined that the knee was stable without functional deficits and the next scheduled follow up was at the one year anniversary of surgery when appellant was released with no formal activity restrictions. Dr. Stickney advised that appellant had reached maximum medical improvement. He referred to Table 17-33 and Table 17-35.<sup>3</sup> Dr. Stickney determined that appellant had a good result after his knee replacement surgery and opined that he sustained 37 percent impairment or 15 percent whole person impairment.

On October 13, 2011 Dr. Nabil F. Anglely, a medical adviser, stated that he was unable to rate impairment as Dr. Stickney had utilized the fifth edition of the A.M.A., *Guides* as opposed to the sixth edition. He recommended that OWCP request an addendum from Dr. Stickney utilizing the correct edition of the A.M.A., *Guides*.

In a report dated January 11, 2012, Dr. Stickney explained that he utilized the A.M.A., *Guides*, (5<sup>th</sup> ed. 2001) as it was the standard in northeast Ohio. He reiterated the impairment rating based on the fifth edition of the A.M.A., *Guides*.

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<sup>2</sup> Appellant has a prior Claim No. xxxxxx669, OWCP accepted the claim for left knee strain that occurred on August 25, 1986, when he tripped over rubber mats. He underwent arthroscopic left knee surgery on May 29, 1987 and returned to full duty on July 27, 1987. This claim has been doubled with the present claim.

<sup>3</sup> A.M.A., *Guides* 547, 549.

Dr. Stickney subsequently referred appellant to Dr. James H. Rutherford, a Board-certified orthopedic surgeon, for an impairment evaluation. In a September 26, 2012 report, Dr. Rutherford described appellant's history of injury. He utilized the sixth edition of the A.M.A., *Guides* and provided finding from physical examination. Dr. Rutherford noted that appellant had a satisfactory gait; was able to stand on his toes and heels and walk in a tandem fashion; was only able to do 50 percent of a deep knee bend; and had full flexion of his lower back. Motor function in the lower extremities was intact on manual muscle testing. Sensory examination in the lower extremities was intact and appellant had a vertical scar over the anterior aspect of his left knee from the arthroplasty. Dr. Rutherford advised that the left knee was stable on both medial and lateral stress test with a negative anterior drawer sign and no point tenderness in the left knee. There was some soreness in the anterior thigh area. Thigh circumferences were 15½ inches on the left and 15 inches on the right, the calf circumferences were 13½ inches on the left and 13 inches on the right. There was no pitting edema in the lower extremities and the range of motion of the left knee included full extension with 95 degrees of flexion. Dr. Rutherford opined that appellant had a class 2 impairment of the left knee with a good result of a left total knee arthroplasty. He referred to Table 16-3 to determine that the findings corresponded with a default value of 25 percent of the left leg.<sup>4</sup> Dr. Rutherford advised that there was a grade modifier of one for the functional history, with residual pain, swelling and stiffness in the left knee and with the need for the occasional use of analgesics. There was a grade modifier one for 95 degrees of flexion of the left knee. He determined that appellant's findings warranted a grade modifier two for the clinical studies based on the total knee replacement, with the implant being in good position. Dr. Rutherford utilized the net adjustment formula to determine a net modifier of -2 which shifted the default value from C to A under class 2. He advised that a grade A impairment under class 2 for the left total knee replacement was a 21 percent permanent impairment of the left lower extremity.

On December 18, 2012 OWCP asked an OWCP medical adviser to review Dr. Rutherford's report. On January 3, 2013 Dr. Angley concurred with Dr. Rutherford's rating of 21 percent using the sixth edition of the A.M.A., *Guides*. He opined that appellant reached maximum medical improvement on September 26, 2012.

On February 19, 2013 OWCP granted appellant a schedule award for 21 percent permanent impairment of the left lower extremity. As appellant previously received an award of two percent to the left lower extremity on November 21, 2001, it subtracted this amount from the award. OWCP determined that appellant was eligible for an additional award of 19 percent. The award covered a period of 54.72 weeks from September 26, 2012 to February 9, 2013.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>5</sup> and its implementing federal regulations,<sup>6</sup> set forth the number of weeks of compensation payable to employees sustaining permanent

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<sup>4</sup> A.M.A., *Guides* 511.

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

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., *Guides* as the uniform standard applicable to all claimants.<sup>7</sup> For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>8</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<sup>9</sup>

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).<sup>10</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>11</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>12</sup>

### ANALYSIS

OWCP accepted appellant's claim for left knee strain, left meniscus tear and aggravation of osteoarthritis and chondromalacia. It expanded the claim to accept aggravation of left knee strain. OWCP also authorized a left knee arthroscopy on February 22, 2001 and a total left knee arthroplasty on July 20, 2010. On November 21, 2001 it granted appellant a schedule award for two percent permanent impairment of the left leg.

Appellant subsequently claimed an increased schedule award and provided a September 1, 2011 report from Dr. Stickney who had utilized the fifth edition of the A.M.A., *Guides*. While Dr. Stickney provided findings and opined that appellant had 37 percent impairment to the left leg, his report is of limited probative value as it was not based upon the proper edition of the A.M.A., *Guides*.<sup>13</sup> The Board notes that effective May 1, 2009, OWCP was

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<sup>7</sup> *Id.* at § 10.404(a).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>9</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>10</sup> A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

<sup>11</sup> *Id.* at 521.

<sup>12</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

<sup>13</sup> An opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment. *I.F.*, Docket No. 08-2321 (issued May 21, 2009).

required to begin applying the sixth edition of the A.M.A., *Guides*<sup>14</sup> in calculating schedule awards.<sup>15</sup>

Dr. Stickney referred appellant to Dr. Rutherford who, in a September 26, 2012 report, examined appellant and rated permanent impairment under the sixth edition of the A.M.A., *Guides*.<sup>16</sup> Dr. Rutherford's findings for the left knee included full extension, 95 degrees of flexion and no instability or effusion. Table 16-3 of the sixth edition of the A.M.A., *Guides*, Knee Regional Grid, provides that total knee replacement can be classified from class 2 to class 4, with class 2 defined as good result with good position, stable and functional.<sup>17</sup> Dr. Rutherford found that class 2 total knee arthroplasty with good result best characterized appellant's condition. He advised the default rating was class C for 25 percent impairment for the left leg. Dr. Rutherford then applied the grade modifiers described in Table 16-6 through Table 16-8<sup>18</sup> and the net adjustment formula.<sup>19</sup> Taking into account grade modifiers for GMFH (1), GMPE (1) and GMCS (2), he determined that there was a net adjustment of -2, which warranted a grade adjustment from the default value of C to grade A or 21 percent left lower extremity impairment under Table 16-3.<sup>20</sup>

On January 3, 2013 the medical adviser concurred with Dr. Rutherford's rating of 21 percent for the left lower extremity using the sixth edition of the A.M.A., *Guides*. He indicated that appellant reached maximum medical improvement on September 26, 2012.

The Board finds that the impairment ratings provided by Dr. Rutherford and the medical adviser conform to the A.M.A., *Guides*. The weight of the medical opinion regarding the extent of appellant's left leg is represented by their reports and establishes that he has no more than 21 percent impairment of the left leg under the sixth edition of the A.M.A., *Guides*. As appellant has previously received a schedule award for a two percent permanent impairment of his left lower extremity due to his left knee condition, he is entitled to an additional 19 percent, for a total impairment of 21 percent to the left lower extremity. The Board finds that he has not shown entitlement to a greater award.

On appeal, appellant argues that he could not find a physician who utilized the sixth edition of the A.M.A., *Guides* and he is entitled to a higher award. However, as found above, the medical evidence does not support a greater impairment under the sixth edition of the A.M.A.,

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<sup>14</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>15</sup> *See supra* note 9.

<sup>16</sup> *Supra* note 10.

<sup>17</sup> A.M.A., *Guides* 511.

<sup>18</sup> *See id.* at 515-21.

<sup>19</sup> Net Adjustment -- (GMFH 1 - CDX 2) + (GMPE 2 - CDX 2) + (GMCS 1 - CDX 2). *See* section 16.3d, A.M.A., *Guides* 521 (6<sup>th</sup> ed. 2008).

<sup>20</sup> A.M.A., *Guides* 511.

*Guides.* The Board also notes that Dr. Rutherford, to whom appellant was referred by Dr. Stickney, provided an appropriate rating using the sixth edition of the A.M.A., *Guides*.

Appellant may request a schedule award based upon 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 has more than 21 percent permanent impairment of his left lower extremity, for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 19, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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