

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

S.B., Appellant

and

**DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICES, U.S. PARK
POLICE, Washington, DC, Employer**

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**Docket No. 12-1489
Issued: January 25, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

**RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge**

JURISDICTION

On July 3, 2012 appellant, through her attorney, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) decision dated May 23, 2012 which affirmed a November 25, 2011 decision denying her schedule award claim. 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 the case.

ISSUE

The issue is whether OWCP properly denied appellant's claim for a schedule award.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On February 17, 2010 appellant, then a 44-year-old management assistant injured her left knee when she slipped and fell in the employing establishment parking lot. OWCP accepted the claim for left knee patella bursitis. Appellant stopped work on February 18, 2010.

Appellant was treated in an emergency room, on February 17, 2010, for a left knee injury sustained in a slip and fall accident at work. She was diagnosed with strain of the left knee. February 17 and 23, 2010 x-rays of the left knee revealed no fracture or dislocation but suprapatellar bursitis. Appellant came under the treatment of Dr. Dennis A. Carlini, a Board-certified orthopedist, from February 23, 2010 to July 25, 2011, for a left knee injury. Dr. Carlini noted a history of prior left knee arthroscopic surgery in 2009. He diagnosed contusion with prepatellar bursitis post-traumatic left knee. Dr. Carlini opined that appellant could return to full duty. He treated her from March 15, 2010 to January 6, 2011 and diagnosed residual patellar tendinitis postoperatively and recommended additional physical therapy. In reports dated March 7 and July 25, 2011, Dr. Carlini noted a normal neurological examination with full range of motion and strength. He diagnosed resolved prepatellar bursitis and patellar tendinitis of the left knee.

On October 3, 2011 appellant filed a claim for a schedule award.

On October 12, 2011 OWCP requested that appellant submit a detailed report from her treating physician which provided an impairment evaluation pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² It specifically requested an opinion as to whether she reached maximum medical improvement, a diagnosis upon which the impairment was based, including surgery and a detailed description of objective and subjective complaints and a detailed description of any permanent impairment under the applicable criteria and tables in the A.M.A., *Guides*. No additional information was submitted.

By decision dated November 25, 2011, OWCP denied appellant's claim for a schedule award.

On December 1, 2011 appellant requested an oral hearing which was held on March 16, 2012. She submitted a January 16, 2012 report from Dr. Stuart J. Goodman, a Board-certified orthopedist, who noted a history of injury on February 17, 2010. Appellant's history was significant for arthroscopic surgery on the left knee in May 2009. An April 13, 2009 triple phase bone scan revealed developing osteoarthritis in the medial compartment of the left knee. Dr. Goodman indicated that an April 1, 2009 magnetic resonance imaging (MRI) scan of the left knee revealed degenerative changes with focal chondromalacia in the mid to lateral medial femoral condyle with adjacent bone bruising, moderate joint effusion and degenerative signal changes in the menisci without a tear. Appellant complained of coldness with too much walking and sudden movement, difficulty in exercising and walking for a prolonged period. Dr. Goodman noted findings upon examination of tenderness upon movement of the left knee to palpation, motor examination revealed that she ambulated independently with a slight antalgic

² A.M.A., *Guides* (6th ed. 2008).

gait, reflexes were 1+/4, plantar response was flexor, sensory examination was intact to vibration, touch, pinprick and position testing, cerebellar examination revealed normal finger to nose and heel to shin testing and Romberg was negative. He opined that within a reasonable degree of medical certainty appellant sustained prepatellar bursitis supported by x-rays on February 17, 2010. Dr. Goodman noted that her condition improved but she had disability. He opined that, pursuant to Table 16.3, Knee Regional Grid, appellant was a class 1, for a mild problem, with three percent impairment of the left lower extremity.

In a decision dated May 23, 2012, OWCP affirmed the decision dated November 25, 2011. OWCP's hearing representative advised that appellant failed to submit an impairment rating in accordance with the A.M.A., *Guides*.³

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 all claimants. A.M.A., *Guides*⁶ has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷

Not all medical conditions accepted by OWCP result in permanent impairment to a schedule member.⁸ The Board notes that, before applying the A.M.A., *Guides*, OWCP must determine whether the claimed impairment of a scheduled member is causally related to the accepted work injury.⁹ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁰

³ *Id.* at (6th ed. 2008).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Supra* note 2.

⁷ *See supra* note 5.

⁸ *Thomas P. Lavin*, 57 ECAB 353 (2006).

⁹ *Michael S. Mina*, 57 ECAB 379, 385 (2006).

¹⁰ *Veronica Williams*, 56 ECAB 367 (2005) (a schedule award can be paid only for a condition related to an employment injury; the claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment).

ANALYSIS

Appellant alleges that she is entitled to a schedule award for permanent impairment of the left lower extremity. To be entitled to a schedule award she must establish that she sustained a permanent impairment of a listed member of the body due to an employment injury.¹¹ Appellant's condition was accepted for left knee patella bursitis. On October 12, 2011 OWCP requested that she submit a medical opinion from her treating physician addressing his degree of permanent impairment under the A.M.A., *Guides*. However, appellant failed to submit sufficient medical evidence to establish entitlement to a schedule award for her accepted left knee patella bursitis.

Appellant submitted a report from Dr. Goodman dated January 16, 2012, who noted findings upon examination of tenderness upon movement of the left knee to palpation, motor examination revealed independent ambulation, slight antalgic gait, reflexes were 1+/4, plantar response was flexor, sensory examination was intact to vibration, touch, pinprick and position testing, cerebellar examination revealed normal finger to nose and heel to shin testing and Romberg testing was negative. Dr. Goodman opined that appellant sustained prepatellar bursitis as supported by x-rays. He noted improvement with disability. Dr. Goodman opined that, pursuant to Table 16.3, Knee Regional Grid, appellant was a class 1, for a mild problem, with three percent impairment of the left lower extremity.

The Board has carefully reviewed Dr. Goodman's January 16, 2012 report and notes that, while the doctor determined that appellant sustained three percent permanent impairment, it is not clear how he came to this conclusion in accordance with the relevant standards of the A.M.A., *Guides*.¹² Dr. Goodman's report failed to provide an adequate description of appellant's physical condition so that an impairment rating could be determined. For instance, he noted findings and concluded that, pursuant to Table 16.3, Knee Regional Grid, she was a class 1, for a mild problem, with three percent impairment of the left lower extremity. However, Dr. Goodman failed to clearly explain how he applied Table 16.3 and applicable grade modifiers in reaching his conclusion. Additionally, it is unclear from his report whether appellant reached maximum medical improvement, as he opined that she has "shown improvement, however does persist with a disability...." The Board notes that it is well established that a schedule award cannot be determined and paid until a claimant has reached maximum medical improvement.¹³

¹¹ *Id.*

¹² *Lela M. Shaw*, 51 ECAB 372 (2000) (where the Board found that a physician's opinion which does not explicitly define impairment in terms of the A.M.A., *Guides*, *i.e.*, whether it be based on findings of pain, loss of range of motion or loss of strength, is insufficient to establish that appellant sustained any permanent impairment due to her accepted employment injury).

¹³ *See Joseph R. Waples*, 44 ECAB 936 (1993).

In order to determine entitlement to a schedule award appellant's physician must provide a sufficiently detailed description of her condition so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁴ As Dr. Goodman did not adequately describe appellant's condition or correlate his findings with the A.M.A., *Guides*, his report is insufficient to establish the extent of her permanent impairment.

Without the necessary reasoned medical opinion evidence establishing the type and extent of appellant's impairment correlated with the A.M.A., *Guides* and explaining the causal relationship between these findings and her accepted employment injury, she has failed to establish that she sustained a permanent impairment as a result of her accepted conditions.¹⁵

On appeal, appellant asserts that Dr. Goodman provided an impairment rating in accordance with the A.M.A., *Guides* as he referenced Table 16-3. However, as noted above, Dr. Goodman failed to explain how he calculated the impairment rating under the A.M.A., *Guides*.

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 failed to establish that she is entitled to a schedule award.

¹⁴ *Renee M. Straubinger*, 51 ECAB 667, 669 (2000) (where the Board found in providing an estimate of the percentage loss of use of a member of the body listed in the schedule provisions, a description of a claimant's impairment must be obtained from his or her physician which is in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment and its resulting restrictions and limitations).

¹⁵ *Id.*; see also *Lela M. Shaw*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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