



## **FACTUAL HISTORY**

On May 9, 2005 appellant, then a 40-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee on May 9, 2005 when his leg struck his desk and twisted. OWCP accepted the claim for left knee internal derangement, left medial meniscus tear and left lower leg osteoarthritis.

Appellant underwent left knee surgery on July 19, 2005. In a report dated February 27, 2006, OWCP's medical adviser opined that appellant had a 16 percent left leg impairment, based on a partial medial and lateral meniscectomy and arthritis. By decision dated March 10, 2006, OWCP issued a schedule award for a 16 percent left leg permanent impairment. The period of the award was 46.08 weeks commencing January 19, 2006.

In a report dated January 2, 2012, Dr. Christopher Deloache, an osteopath, indicated that appellant underwent left knee arthroscopic surgery on August 17, 2011. He opined that appellant had a 60 percent left leg permanent impairment based on Table 16-3 (Knee Regional Grid) and arthritis under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). By report dated January 24, 2012, OWCP's medical adviser opined that the case should be referred for a second opinion evaluation.

On February 22, 2012 appellant underwent additional left knee surgery. Dr. Deloache selected for a second opinion examination, Dr. Tim Pettingell, a physiatrist, submitted a report dated March 5, 2012. Dr. Pettingell provided a history and results on examination. With respect to permanent impairment, he opined that under Table 16-3 appellant had a 12 percent left leg impairment based on the meniscal injury. Dr. Pettingell also stated that "at the discretion" of the OWCP medical adviser, additional impairments for knee joint and patellofemoral arthritis could be included under the A.M.A., *Guides*.

In a report dated April 16, 2012, OWCP's medical adviser stated that the A.M.A., *Guides* indicate that, when there are two significant diagnoses, the examiner should use the diagnosis with the highest impairment rating. He also noted that appellant had surgery on February 22, 2012 and Dr. Pettingell's examination was less than two weeks after surgery. OWCP's medical adviser recommended "an additional evaluation for the purpose determining impairment from either a [Board-certified] specialist in physical medicine or orthopedic surgery" who was familiar with the A.M.A., *Guides*, once appellant had reached maximum medical improvement.

OWCP did not obtain an additional second opinion evaluation. In a decision dated May 17, 2012, it found that appellant was not entitled to an additional schedule award.

On May 22, 2012 appellant submitted an April 13, 2012 report from Dr. Deloache and requested reconsideration. Dr. Deloache did not provide results on examination. He noted that appellant stated that he was doing better with his left leg with the knee brace, but without the brace he still had significant pain and decreased motion. Dr. Deloache opined that appellant had a 44 percent left leg impairment. OWCP referred the case to an OWCP medical adviser for a review of the April 13, 2012 report.

In a report dated May 31, 2012, OWCP's medical adviser opined that appellant had a 26 percent permanent impairment to the left leg under Table 16-3. He identified the diagnostic criteria as primary knee joint arthritis and a one millimeter cartilage interval. The medical adviser stated that appellant had previously received 16 percent for a meniscectomy and arthritis, and therefore the additional impairment was 10 percent. He opined that the date of maximum medical improvement was April 13, 2012.

By decision dated June 8, 2012, OWCP issued a schedule award for a 10 percent additional impairment to the left leg. The period of the award was 28.80 weeks from April 13, 2012.

On June 13, 2012 appellant requested reconsideration of the claim. He submitted a February 1, 2012 magnetic resonance imaging scan report and a February 2, 2012 report from Dr. Deloache providing results on examination.

By decision dated July 6, 2012, OWCP declined to review the merits of the claim. It found the evidence submitted was insufficient to warrant a review of the schedule award issue.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</sup> Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>3</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.<sup>4</sup> A schedule award begins of the date of maximum medical improvement, which is the time when the physical condition of the injured member of the body has stabilized and will not improve further.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

In the present case, OWCP did attempt to develop the medical evidence and refer appellant for a second opinion evaluation. The second opinion physician, Dr. Pettingell, provided a March 5, 2012 report with detailed results on examination and an opinion as to permanent impairment under the A.M.A., *Guides*. OWCP's medical adviser noted in an April 16, 2012 report that there was a question as to maximum medical improvement, as appellant had undergone additional left knee surgery within two weeks of the examination by

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<sup>2</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>3</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>4</sup> FECA Bulletin No. 09-03 (March 15, 2009).

<sup>5</sup> *Adela Hernandez-Piris*, 35 ECAB 839 (1984); *James T. Rogers*, 33 ECAB 347 (1981).

Dr. Pettingell. In addition, there was a question as to whether the arthritis diagnosis was properly included in the impairment rating.

OWCP's medical adviser recommended that OWCP send the case for an additional second opinion examination once maximum medical improvement was reached. OWCP did not, however, further develop the evidence in accord with these recommendations. Dr. Deloache submitted an April 13, 2012 report on May 22, 2012. He did not specifically address the issue of maximum medical improvement. Moreover, Dr. Deloache provided no results on physical examination or other background. The medical evidence necessary to support a schedule award includes a physician's report that provides a detailed description of the impairment.<sup>6</sup>

The Board finds that OWCP should have followed the recommendations of OWCP's medical adviser in the April 16, 2012 report. When OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, OWCP should secure an appropriate report on the relevant issues.<sup>7</sup> The issue of maximum medical improvement needed to be addressed, detailed results on examination provided and a rationalized medical opinion on permanent impairment under the A.M.A., *Guides* secured. The Board also notes that, since appellant had previously received a schedule award for the left leg, the medical evidence should address the issue of whether any current permanent impairment to the left leg in whole or in part would duplicate the compensation paid for the prior impairment.<sup>8</sup>

The case will be remanded to OWCP for appropriate development of the medical evidence. After such development as required to resolve the schedule award issue, OWCP should issue an appropriate decision. In view of the Board's findings, the denial of merit review issue will not be addressed on appeal.

### CONCLUSION

The Board finds that the case is not in posture for decision and is remanded to OWCP for further development of the medical evidence.

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<sup>6</sup> See *James E. Jenkins*, 39 ECAB 860 (1988); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

<sup>7</sup> See *Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

<sup>8</sup> T.S., Docket No. 09-1308 (issued December 22, 2009); 20 C.F.R. § 10.404(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 8, 2012 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 17, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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