

forklift. On the claim form, he noted his son's, date of birth February 27, 1987, as his dependent. A September 20, 2005 magnetic resonance imaging (MRI) scan of the left knee indicated that appellant had large joint effusion and findings consistent with a tear of the posterior horn of the medial meniscus.

OWCP accepted the claim for left medial collateral ligament sprain and contusion and paid all appropriate benefits, including a February 8, 2006 left knee partial medial meniscectomy. The operative report indicated that the patellofemoral joint was inspected and found to be without significant chondromalacia. In a November 27, 2006 report, Dr. Todd C. Ryan, an osteopath, noted x-rays of the left knee, including bilateral weight bearing anterior/posterior, lateral and sunrise views, showed a skeletally mature individual with no obvious abnormalities. Appellant retired on disability in 2008 and began receiving social security disability in 2012.

On March 2, 2012 OWCP received a Form CA-7, claim for schedule award compensation, dated January 25, 2012. With respect to dependents, appellant did not report any dependents. The record reflects that in a November 8, 2005 CA-7 form, claim for compensation, appellant noted his son as his only dependent; and in a January 17, 2006 CA-7 form, he noted no dependents. On February 21, 2006 appellant certified in an EN1032 form that he was married, but did not live with his wife or make payments for her support. In a September 23, 2006 CA-7 form, he did not list any dependents; and in a March 18, 2008 CA-7 form and April 14, 2008 Form CA-2a, he listed his wife as a dependent and that she was living with him. In a January 25, 2012 CA-7 form, appellant did not list any dependents.

In a September 23, 2011 report, updated January 9, 2012, Dr. Arthur Becan, an orthopedic surgeon, noted the history of injury and appellant's subsequent medical course. He noted that appellant returned to full-duty work in June 2006 after his February 8, 2006 left knee partial medial meniscectomy. Dr. Becan noted his review of the medical records and provided examination findings. He opined that appellant reached maximum medical improvement on September 23, 2011. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Becan opined that appellant had 28 percent impairment of the left lower extremity based on class 3 primary knee joint arthritis. This was based on October 8, 2010 x-ray films and Table 16-3, page 511 of the A.M.A., *Guides*.

In a March 9, 2012 report, an OWCP medical adviser reviewed the medical record, including Dr. Becan's January 9, 2012 report. He opined that appellant reached maximum medical improvement on September 23, 2011, the date of Dr. Becan's examination. Under Table 16-3, page 509, the medical adviser opined that appellant had two percent left lower extremity impairment for a class 1 partial left knee medial meniscectomy. Under Table 16-6, page 516, a grade modifier of one was assigned for functional history and, under Table 16-7, page 517, a grade modifier two was assigned for physical examination grade modifier. The assignment of a modifier for clinical studies was found not applicable as no clinical studies were presented at maximum medical improvement. The medical adviser utilized the net adjustment formula, (GMFH-CDX) (1-1) + (GMPE-CDX) (2-1) + (GMCS-CDX) (N/A), and found a net adjustment of one. He found a net adjustment of one moved a class 1 partial medial meniscectomy from grade C to a final grade of D or two percent final impairment. The medical adviser noted that, while Dr. Becan rated appellant for severe primary knee joint arthritis, this was not an accepted

condition and there was no objective evidence of primary knee joint arthritis. He also noted that Dr. Becan provided no diagnostic reading of the x-rays but rated appellant as if there was one millimeter of joint space narrowing without any proof.

By decision dated March 22, 2012, OWCP granted appellant a schedule award for two percent permanent impairment of the left lower extremity. The award ran 5.76 weeks for the period September 23 to November 2, 2011. Appellant was paid at the basic compensation rate of 66 and 2/3 percent.

On April 4, 2012 appellant, through his attorney, requested a hearing before an OWCP hearing representative, which was held July 10, 2012. Counsel stated that Dr. Becan had reviewed x-rays to determine appellant's impairment due to arthritis and submitted a copy of the October 2010 x-rays. He also argued that the schedule award should have been paid at the augmented rate or 75 percent as opposed to the basic rate or 66 2/3 percent rate OWCP used as appellant has been married since 1996. Appellant testified that he and his wife lived together. Following the hearing, a copy of appellant's November 23, 1996 marriage certificate was submitted.

By decision dated September 26, 2012, an OWCP hearing representative affirmed the March 22, 2012 OWCP decision. The hearing representative found that appellant was not entitled to a schedule award based on the diagnosis of joint arthritis as there was no medical evidence to support that appellant's arthritis preexisted the work injury nor was there evidence to support that the work injury or surgery caused, aggravated, precipitated or exacerbated the condition. The hearing representative further found that the factual evidence of file with regard to whether appellant was married and residing with his wife was inconsistent and therefore was insufficient to establish that appellant was entitled to be paid at the augmented rate of 75 percent. Appellant was advised of the evidence he needed to submit and the discrepancies in the evidence he needed to clarify to establish entitlement to the augmented compensation rate.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA² and its implementing federal regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁴ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ For decisions issued after

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁵ *Supra* note 4.

February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶ For decisions issued after May 1, 2009, the sixth edition will be used.⁷ It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.⁸

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).⁹ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

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.¹⁰

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's 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.¹¹

ANALYSIS -- ISSUE 1

Appellant's claim was accepted by OWCP for left medial collateral ligament sprain and contusion and a left knee partial medial meniscectomy was authorized. He claimed a schedule award. OWCP awarded appellant two percent impairment to the left lower extremity on the basis of the left knee medial meniscectomy. No additional impairment rating was provided for appellant's arthritis.

In support of his claim for a schedule award, appellant provided a January 9, 2012 report from Dr. Becan who rated impairment for the left lower extremity based on primary knee joint arthritis. However, the Board notes that OWCP has not accepted an arthritic knee condition and Dr. Becan did not sufficiently explain how the accepted left medial collateral ligament sprain and contusion or surgery caused, aggravated, precipitated or exacerbated this condition. The claimant has the burden of proving that the condition for which a schedule award is sought is

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ See *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b. (June 1993). This portion of OWCP's procedures provide that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

⁹ A.M.A., *Guides* 494-531.

¹⁰ *Veronica Williams*, 56 ECAB 367, 370 (2005).

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

causally related to his or her employment.¹² Dr. Becan referenced left lower extremity impairment under the A.M.A., *Guides* but he did not provide a reasoned explanation as to how any arthritic condition would be causally related to an accepted condition. Furthermore, the record does not contain any diagnostic records contemporaneous to the work injury that demonstrate that appellant had joint arthritis prior to his September 17, 2005 work injury. As noted, the September 27, 2005 MRI scan demonstrated joint effusion and a tear of the posterior horn of the medial meniscus; the February 8, 2006 operative report indicated the patellofemoral joint was without significant chondromalacia, and Dr. Ryan in his November 27, 2006 report found no obvious abnormalities on the bilateral weight-bearing x-rays of appellant's knee. OWCP's medical adviser additionally reviewed the matter and found no basis on which an impairment rating could be based on primary knee joint arthritis. As there is no evidence that appellant's arthritis preexisted the work injury, it cannot be included in the schedule award determination.

OWCP's medical adviser reviewed Dr. Becan's report and found appellant had two percent left lower extremity impairment based on left knee partial medial meniscectomy. Under Table 15-3, page 509, he found that appellant had class 1 rating for partial medial meniscectomy. The medical adviser utilized Dr. Becan's examination findings and found that under Table 16-6 through Table 16-8 that appellant had grade modifier 1 for functional history, grade modifier 2 for physical examination, and grade modifier for clinical studies were not applicable. He applied the grade modifiers to the net adjustment formula and found a net adjustment of 1. Under the net adjustment formula, (GMFH-CDX) (1-1) + (GMPE-CDX) (2-1) + (GMCS-CDX) (N/A) results in a net adjustment of one. This represents grade D or two percent left lower extremity impairment for partial medial meniscectomy. This impairment rating is consistent with the examination findings utilizing the A.M.A., *Guides*. The Board finds that the medical evidence establishes that appellant sustained no more than two percent impairment of the left lower extremity.

On appeal appellant argues that his physician's impairment rating entitled him to a greater award. As noted, the medical adviser provided an impairment rating consistent with Dr. Becan's examination findings utilizing the A.M.A., *Guides*. Dr. Becan failed to provide rationale of a causal relationship and there is no evidence that appellant's arthritis preexisted the work injury. Thus, his rating based on primary knee joint arthritis is of little probative value.

Appellant may request a schedule award or an increased schedule award based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

¹² See *Veronica Williams, supra* note 10.

LEGAL PRECEDENT -- ISSUE 2

The basic rate of compensation under FECA is 66 2/3 percent of the injured employee's monthly pay. Where the employee has one or more dependents as defined in FECA, he is entitled to have his basic compensation augmented at the rate of 8 1/3 percent, for a total of 75 percent of monthly pay.¹³

A wife is considered an employee's dependent if she is a member of the same household, is receiving regular contributions from the employee for her support or if the employee has been ordered by a court to contribute to her support.¹⁴ In determining dependency under FECA, the decisive test is whether the person for whom benefits are claimed as a dependent of the employee, in fact, looked to and relied, in whole or in part, upon the contributions given by the employee as a means of maintaining or helping to maintain a customary standard of living.¹⁵

A dependent also includes an unmarried child less than 18 years of age, while living with the employee or receiving regular contributions for support.¹⁶ The term child includes stepchildren, adopted children and posthumous children.¹⁷

ANALYSIS -- ISSUE 2

Appellant received a schedule award for two percent impairment to the left lower extremity, which was paid at the basic compensation rate of 66 2/3 percent of his monthly pay. It is appellant's contention before OWCP and on appeal that the basic compensation rate of 66 2/3 percent of his monthly pay should be augmented under 5 U.S.C. § 8110(a) because his wife is a dependent under this section. He asserts that he has been married since 1996 and testified that he and his wife live together. Appellant submitted a copy of a 1996 marriage certificate.

OWCP's hearing representative found the factual evidence of record with regard to the question of whether appellant is married and residing with his wife is inconsistent and therefore insufficient to establish that appellant is entitled to be paid at the augmented compensation rate. The Board agrees. While appellant may have been married since 1996, he first noted his wife in a February 21, 2006 EN1032 form but indicated that she did not live with him and he did not make payments for her support. He did not list his wife as a dependent again until March 18 and April 14, 2008, when he indicated that she was living with him. However, in his January 25, 2012 CA-7 form, appellant did not list any dependents.

¹³ 5 U.S.C. § 8110(b); *see also William G. Dimick*, 38 ECAB 751 (1987). The compensation rate for schedule awards is the same as compensation for wage loss. *See* 5 U.S.C. § 8107; 20 C.F.R. § 10.404(b) (1999).

¹⁴ 5 U.S.C. § 8110(a)(2).

¹⁵ *See Nancy J. Masterson*, 52 ECAB 507 (2001); *Helyn E. Girmann*, 11 ECAB 557 (1960).

¹⁶ 5 U.S.C. § 8110(a)(3).

¹⁷ *Id.* at § 8101(9).

Based on the evidence of record before OWCP the evidence is conflicting as to whether appellant's wife was a dependent under 5 U.S.C. § 8110, during the relevant time period. Appellant was advised regarding the evidence necessary to establish dependency by the hearing representative, but did not submit the evidence necessary to clarify this issue. The Board finds that OWCP properly determined the schedule award rate to be the basic compensation rate of 66 2/3 percent of monthly pay.

CONCLUSION

The Board finds that appellant has not established that he has more than two percent impairment of the left lower extremity for which he received a schedule award. Appellant has not established any ratable left lower extremity impairment causally related to his accepted conditions. Additionally, he has not met his burden to establish payment of his schedule award based on the augmented compensation rate.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board