



claim for an internal derangement of the left knee. Appellant previously injured his left knee in 1997 and underwent an arthroscopy with a medial and lateral partial meniscectomy in 2004. He retired from the employing establishment on July 31, 2010.

On July 14, 2010 appellant filed a claim for schedule award compensation for his left leg. In a June 21, 2010 report, Dr. Jeffrey N. Guttman, a Board-certified orthopedic surgeon, noted findings on examination and opined that appellant reached maximum medical improvement. Under the State of New York Workers' Compensation Board Medical Guidelines, he opined that appellant had 22.5 percent impairment of the left lower extremity.

In an August 6, 2010 letter, OWCP advised appellant and Dr. Guttman that medical evidence needed to rate permanent partial impairment was to be under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). No additional medical evidence was received.

By decision dated September 13, 2010, OWCP denied appellant's schedule award claim on the basis that there was insufficient medical evidence to support permanent impairment.

On May 30, 2011 appellant requested reconsideration. In a May 24, 2011 report, Dr. Guttman noted the history of injury, provided examination findings and opined that appellant reached maximum medical improvement. He reviewed appellant's previous work-related left knee injuries in 1997 and 2002 and surgical history of radial medial meniscus tear resection in 1997 and resection of the posterior horn medial meniscus and posterior lateral meniscus tear in 2004. Dr. Guttman opined that appellant had 10 percent final combined impairment under the sixth edition of the A.M.A., *Guides*. He listed various sections under Chapter 16 of the A.M.A., *Guides* and indicated that a permanent impairment worksheet was attached. A permanent impairment worksheet, however, is not of record.

On September 17, 2011 Dr. Andrew A. Morcola, an OWCP medical adviser, reviewed the statement of accepted facts and medical documentation from Dr. Guttman. While Dr. Guttman indicated that appellant had 10 percent left lower extremity impairment secondary to the left knee injury, he did not address how the impairment rating was made. Dr. Morcola noted that there was no impairment worksheet from Dr. Guttman.

In a January 10, 2012 letter, OWCP requested that Dr. Guttman provide clarification as to how he made his impairment rating under the sixth edition of the A.M.A., *Guides*.

In a January 19, 2012 report, Dr. Guttman noted the history of injury and examination findings. He opined that appellant had post-traumatic arthritis in the left knee and reached maximum medical improvement. Based on the State of New York Workers' Compensation Board Medical Guidelines, Dr. Guttman opined that appellant had 30 percent lower extremity impairment of his left leg, 10 percent mild defect of flexion and extension, 10 percent chondromalacia patella and 10 percent medial and lateral meniscal excision.

OWCP referred appellant, along with a statement of accepted facts and the medical record, to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the extent of permanent impairment under the A.M.A., *Guides*, if any. In a March 22, 2012 report, Dr. Sultan opined that appellant reached maximum medical improvement

and had five percent impairment of the left lower extremity. This was based on a combination of the fifth edition of the A.M.A., *Guides*, New York State Guidelines and McBride's Guide to Permanent Disability.

In a June 4, 2012 report, OWCP's medical adviser found that Dr. Sultan erroneously referred to the fifth edition of the A.M.A., *Guides*, the New York State Guidelines and the McBrides Guide to Permanent Disability. He could not replicate how Dr. Sultan rated five percent impairment. The medical adviser opined that Dr. Sultan's March 22, 2010 report was of no value and recommended a second opinion examination by a physician familiar with the sixth edition of the A.M.A., *Guides*.

On July 10, 2012 appellant was referred for a second opinion examination by Dr. David A. Benatar, a Board-certified orthopedic surgeon. In an August 14, 2012 report, Dr. Benatar noted the history of injury, reviewed the statement of accepted facts and the medical record and presented findings on examination. In terms of range of motion, he used a goniometer and found 116 to 118 degrees of flexion and full extension. Dr. Benatar noted tenderness to the patella consistent with arthritis as well as some joint line tenderness consistent with arthritis. No atrophy, decrease in strength or sensory changes were noted. Subjective complaints of pain and discomfort were noted and that appellant avoids running secondary to pain. Dr. Benatar diagnosed status post multiple injuries to the left knee with resultant arthritis. He opined that appellant reached maximum medical improvement. Under the sixth edition of the A.M.A., *Guides*, Dr. Benatar opined that appellant had seven percent impairment. Under Table 16-3, page 511, he used primary knee joint arthritis and assigned it class 1 with a default value of seven percent. Dr. Benatar assigned grade modifier Functional History (GMFH) of 1 based on mild antalgic gait and grade modifier Physical Examination (GMPE) of 1 based on mild decreased range of motion. Dr. Benatar found a grade modifier Clinical Studies (GMCS) were not applicable as the x-rays were used in the diagnosis class. He applied the net adjustment formula,  $(GMFH-CDX) (1-1) + (GMPE-CDX) (1-1) + (GMCS-CDX) (N/A)$  and found a net adjustment of zero. Thus, with a net adjustment of zero, appellant had a final grade of C or six percent final impairment.

On September 11, 2012 Dr. Henry J. Malieto, an OWCP medical adviser, reviewed the medical evidence of record, including Dr. Benatar's August 14, 2012 report. He opined that appellant reached maximum medical improvement on August 14, 2012, the date of Dr. Benatar's report. The medical adviser concurred with Dr. Benatar's rating of seven percent impairment calculation under the sixth edition of the A.M.A., *Guides*.

In a decision dated October 3, 2012, OWCP granted appellant a schedule award for seven percent impairment of the left leg. The period of the award ran for 20.16 weeks for the period August 14, 2012 to January 2, 2013.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>2</sup> and its implementing federal 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, 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.<sup>4</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> For decisions issued after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<sup>7</sup> 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.<sup>8</sup>

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.<sup>9</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

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.<sup>10</sup>

## ANALYSIS

Appellant's claim was accepted by OWCP for an internal derangement of the left knee. He previously injured his left knee in 1997 and had arthroscopic procedures, including medial

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<sup>2</sup> *Id.* at § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Ausbon N. Johnson*, 50 ECAB 304 (1999).

<sup>5</sup> *Supra* note 4.

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

<sup>7</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>8</sup> *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 procedure provides that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

<sup>9</sup> A.M.A., *Guides* 494-531.

<sup>10</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

and lateral partial meniscectomy in 2004. Appellant claimed a schedule award. OWCP granted him a schedule award for seven percent impairment to the left lower extremity on the basis of primary knee joint arthritis.

Appellant provided several reports from Dr. Guttman, who offered impairment ratings under the State of New York Workers' Compensation Board Medical Guidelines. The medical evidence necessary to support a schedule award includes a physician's report that provides a detailed description of the impairment.<sup>11</sup> Dr. Guttman did not provide an adequate description of the impairment. Moreover, the Board has held that a medical report that does not describe the basis for the impairment rating or refer to specific tables in the A.M.A., *Guides* is of diminished probative value.<sup>12</sup> Dr. Guttman referenced a state workers' compensation statute without discussing the A.M.A., *Guides* or otherwise describing the basis for an impairment. In a May 24, 2011 report, he opined that appellant had 10 percent left lower extremity impairment under the sixth edition of the A.M.A., *Guides*. While he cited to several sections, Dr. Guttman did not explain how he rated impairment. The medical adviser reviewed Dr. Guttman's report and could not determine how he made his impairment calculation. While Dr. Guttman indicated that an impairment worksheet was provided, it is not of record. His impairment rating are of diminished probative value.

In a March 22, 2012 report, Dr. Sultan, a second opinion examiner, determined that appellant had five percent impairment of the left lower extremity. However, he provided his impairment rating in accordance with the fifth edition of the A.M.A., *Guides*. As noted above, this report is of limited probative value as it is not based on the proper sixth edition of the A.M.A., *Guides*.

On August 14, 2012 Dr. Benatar found that appellant had seven percent impairment to the left leg under the sixth edition of the A.M.A., *Guides*. He rated class 1 impairment due to primary knee joint arthritis.<sup>13</sup> Dr. Benatar found that appellant's functional history was grade 1 due to mild antalgic gait.<sup>14</sup> He further determined that the physical examination was grade 1 due to mild decrease range of motion.<sup>15</sup> Dr. Benatar also determined that clinical studies grade modifier was not applicable as the joint space narrowing on x-rays was used in the diagnosis class.<sup>16</sup> Under the net adjustment formula, (GMFH-CDX) (1-1) + (GMPE-CDX) (1-1) + (GMCS-CDX) (N/A) results in a net adjustment of 0. This represents grade C or seven percent left lower extremity impairment for primary knee joint arthritis. OWCP's medical adviser reviewed Dr. Benatar's report and found it consistent with the A.M.A., *Guides*. It establishes that appellant has no more than seven percent impairment to the left lower extremity for which he received a schedule award.

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<sup>11</sup> See *James E. Jenkins*, 39 ECAB 860 (1988); *id.* at Chapter 2.808.6(c) (August 2002).

<sup>12</sup> See *Mary L. Henninger*, 52 ECAB 408 (2001).

<sup>13</sup> A.M.A., *Guides* 511 Table 16-3.

<sup>14</sup> *Id.* at 516 Table 16-6.

<sup>15</sup> *Id.* at 517 Table 16-7.

<sup>16</sup> Section 16.3, pages 515-16.

On appeal, appellant argues that Dr. Guttman's May 24, 2011 impairment rating found greater impairment. As noted, Dr. Guttman failed to make an impairment rating referring to the sixth edition of A.M.A., *Guides*. Appellant also argues that he is entitled to a schedule award based on his previous meniscal injury and surgery.

The A.M.A., *Guides* explain that, on the basis of diagnosis, the condition is assigned to a specific class in the regional grid. Reliability of the diagnosis is essential and should be consistent with clinical history and findings at the time of the impairment assessment. The A.M.A., *Guides* also caution that surgery does not necessarily result in an impairment rating unless it is a factor that contributes to placing a diagnosis within a class. Surgical intervention is only relevant if it alters the functional status of the condition evaluated at maximum medical improvement (MMI).<sup>17</sup> Dr. Benatar chose to rate appellant's left knee impairment for the primary diagnosis of arthritis, the Board concludes that Dr. Benatar's evaluation, based upon the primary diagnosis of arthritis, at the time of MMI, constitutes the weight of the medical evidence.

Appellant also submitted new evidence on appeal. However, the Board lacks jurisdiction to review such evidence for the first time on appeal.<sup>18</sup>

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.

### **CONCLUSION**

The Board finds that appellant has not established that he has more than seven percent impairment of the left lower extremity for which he received a schedule award.

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<sup>17</sup> Section 16.2a 499.

<sup>18</sup> See 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 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