

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

J.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Covington, KY, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 13-732
Issued: July 5, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 8, 2013 appellant filed a timely appeal from an August 21, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 appellant established that she has more than 25 percent impairment of the right leg for which she received a schedule award.

FACTUAL HISTORY

On August 2, 2010 appellant, then a 44-year-old clerk, injured her right knee while in the performance of duty. OWCP accepted right chondromalacia patella and authorized a December 14, 2010 partial medial and lateral meniscectomies with chondroplasty of all three compartments. By decision dated April 22, 2011, it granted a schedule award for 10 percent

¹ 5 U.S.C. § 8101 *et seq.*

impairment of the right leg. On June 28, 2011 appellant underwent right knee arthroscopic partial lateral meniscectomy and chondroplasty of all three compartments, which OWCP authorized. OWCP subsequently accepted an aggravation of right knee osteoarthritis and approved right total knee arthroplasty, which appellant underwent on January 26, 2012.

On February 24, 2012 appellant requested an increased schedule award.

In a June 7, 2012 letter, OWCP advised appellant's physician, Dr. Matthew T. Hummel, a Board-certified orthopedic surgeon, of the medical evidence needed for an assessment of permanent partial impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a July 10, 2012 report, Dr. Hummel advised that appellant reached maximum medical improvement following her total knee arthroplasty of June 6, 2012. He stated that she had a good but guarded recovery. Under the fifth edition of the A.M.A., *Guides*, Dr. Hummel opined that appellant had 38 percent lower extremity impairment secondary to loss of range of motion and muscle weakness secondary to her knee replacement.

In a July 19, 2012 report, Dr. James W. Dyer, an OWCP medical adviser, reviewed the medical evidence of record and found that appellant reached maximum medical improvement on July 10, 2012. He reviewed Dr. Hummel's report and noted that the impairment rating was based on the fifth edition of the A.M.A., *Guides*. Under the sixth edition of the A.M.A., *Guides*, Dr. Dyer opined that appellant had 25 percent impairment to the right leg. Under Table 16-3, page 511, appellant was class 2 for total knee replacement. She was grade modifier 2 for Functional History (GMFH), grade modifier 2 for Physical Examination (GMPE), and grade modifier 2 for Clinical Studies (GMCS). The medical adviser applied the net adjustment formula, (GMFH-CDX) (2-2) + (GMPE-CDX) (2-2) + (GMCS-CDX) (2-2), and found a net adjustment of zero or no grade change. Dr. Dyer concluded that appellant had a final grade of C or 25 percent impairment of the right leg. As appellant previously received 10 percent impairment of her right leg, she had an additional 15 percent impairment.

In a July 23, 2012 letter, OWCP provided Dr. Hummel a copy of the medical adviser's impairment rating and requested that he respond to the rating under the sixth edition of the A.M.A., *Guides*.

In a July 27, 2012 report, Dr. Hummel stated that appellant reached maximum medical improvement on June 6, 2012. He noted that she would always have some continued discomfort leading to weakness secondary to postoperative scarring and pain. Dr. Hummel found that appellant has some decreased range of motion compared to the contralateral (left) side as documented in her chart. Under Table 16-3, he agreed that her fair result from surgery placed her in class 2, borderline class 3, with a default impairment of 25 percent for total knee replacement. A progress note dated June 6, 2012 was also submitted.

On August 16, 2012 Dr. Dyer agreed with the date of maximum medical improvement of June 6, 2012 as noted by Dr. Hummel.

By decision dated August 21, 2012, OWCP granted appellant a schedule award for an additional 15 percent impairment to the right leg. The period of the award ran from June 6, 2012 to April 4, 2013 for a total of 43.2 weeks of compensation.

LEGAL PRECEDENT

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 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

A claim for an increased schedule award may be based on new exposure or, absent any new exposure to employment factors, medical evidence indicating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.⁸ In determining entitlement to a schedule award, preexisting impairment to the scheduled member should be included.⁹ Any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.¹⁰

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies.¹¹ 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

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.

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 James R. Hentz*, 56 ECAB 573 (2005).

⁹ *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.

¹⁰ *See Carol A. Smart*, 57 ECAB 340 (2006); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(a)(2) (March 2011).

¹¹ A.M.A., *Guides* 494-531.

percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.¹²

ANALYSIS

Appellant's claim was accepted by OWCP for right chondromalacia patella and right leg osteoarthritis. She underwent three authorized surgeries, including a total right knee replacement. Appellant previously received a schedule award for 10 percent right leg impairment and she requested an increased schedule award. OWCP granted appellant an additional 15 percent impairment to the right lower extremity, or a total award of 25 percent right lower extremity impairment.

In an impairment determination dated July 10, 2012, Dr. Hummel found that appellant reached maximum medical improvement following her total knee arthroplasty on June 6, 2012. He opined that appellant had 38 percent right lower extremity impairment; however, his impairment rating was made under the fifth edition of the A.M.A., *Guides*. As noted, this report is of limited probative value as it is not based on the proper edition of the A.M.A., *Guides*.

On July 19, 2012 Dr. Dyer reviewed Dr. Hummel's July 10, 2012 report to determine that, under the sixth edition of the A.M.A., *Guides*, appellant had 25 percent impairment to the right leg. Under Table 16-3, page 511, appellant was class 2 for total knee replacement.¹³ Based on Dr. Hummel's examination finding, appellant was grade modifier 2 for functional history,¹⁴ grade modifier 2 for physical examination,¹⁵ and grade modifier 2 for clinical studies.¹⁶ He applied the net adjustment formula, (GMFH-CDX) (2-2) + (GMPE-CDX) (2-2) + (GMCS-CDX) (2-2), and found a net adjustment of zero or no grade change. Dr. Dyer concluded that this represented 25 percent impairment of the right leg. Dr. Hummel subsequently reviewed the medical adviser's findings and, in a July 27, 2012 report, agreed that appellant's surgical result put her in class 2 with a default impairment of 25 percent for total knee replacement.¹⁷ The Board finds that the medical adviser's calculation is consistent with the A.M.A., *Guides*. Both Dr. Hummel and Dr. Dyer agreed that the date of maximum medical improvement was June 6, 2012.

The Board finds that the weight of the medical evidence establishes that appellant has no more than 25 percent right leg impairment under the sixth edition of the A.M.A., *Guides*. As OWCP previously awarded her 10 percent right lower extremity impairment, the medical adviser properly subtracted that amount from 25 percent to find she was entitled to an additional 15 percent right lower extremity impairment.

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹³ A.M.A., *Guides* 511, Table 16-3.

¹⁴ *Id.* at 516, Table 16-6.

¹⁵ *Id.* at 517, Table 16-7.

¹⁶ *Id.* at 519, Table 16-8.

¹⁷ Dr. Hummel did not comment on the medical adviser's determination of grade modifiers or the application of the net adjustment formula.

On appeal appellant maintains that she has greater impairment than that awarded. As noted, the Board finds that the medical evidence establishes that she has 25 percent right leg impairment.

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 she has more than 25 percent total impairment of the right lower extremity for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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