United States Department of Labor
Employees' Compensation Appeals Board

E.L., Appellant	)	
and	)	**Docket No. 13-894**
	)	**Issued: July 8, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Orlando, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2013 appellant, through her attorney, filed a timely appeal from a February 5, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a one percent left leg permanent impairment.

FACTUAL HISTORY

The case was before the Board on a prior appeal. OWCP accepted that appellant sustained a left knee contusion and left knee derangement when she tripped on a chair in the performance of duty on October 13, 2006. Appellant underwent arthroscopic left knee surgery

[1] 5 U.S.C. § 8101 *et seq.*

on February 9, 2007.[2] By decision dated April 3, 2009, the Board affirmed a June 12, 2008 OWCP decision denying a schedule award.[3] The Board noted that the medical evidence did not contain a probative opinion as to a permanent impairment. The history of the case as recorded by the Board in the prior decision is incorporated herein by reference.

In a report dated May 12, 2010, Dr. Robert Murrah, a Board-certified orthopedic surgeon, diagnosed chronic left knee pain and swelling following an October 13, 2006 injury and chondromalacia patella. He noted that a recent MRI scan showed some chondromalacia patella, but the meniscal structures showed only some mild degenerative changes and no obvious tears. By report dated August 10, 2010, Dr. Murrah stated that appellant had reached maximum medical improvement and the impairment was five percent to the whole body relative to appellant's employment injury. In a report dated October 26, 2010, he stated that under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter the A.M.A., *Guides*) he assigned appellant an 11 percent permanent impairment relative to her left knee.

On April 10, 2012 OWCP asked an OWCP medical adviser for an opinion as to an employment-related permanent impairment. In a report dated April 13, 2012, the medical adviser noted that appellant had surgery despite a normal MRI scan. He opined that appellant had a one percent left leg impairment based on Table 16-3 of the A.M.A., *Guides* (6th ed.). As to grade modifiers, the medical adviser assigned a two for functional history, one for physical examination and found clinical studies were not applicable "per MRI [scan] and op[erative] note."

By decision dated July 10, 2012, OWCP issued a schedule award for a one percent permanent impairment to the left leg. The period of the award was 2.88 weeks commencing August 10, 2010.

Appellant requested a hearing, which was held on November 16, 2012. By decision dated February 5, 2013, the hearing representative affirmed the July 10, 2012 decision.

LEGAL PRECEDENT

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.[4] 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

[2] The report from the orthopedic surgeon, Dr. Charles Veurink, noted that a magnetic resonance imaging (MRI) scan did not show any definite meniscal or ligamentous injury. The record contains an October 25, 2006 MRI scan report.

[3] Docket No. 08-2054 (issued April 3, 2009).

[4] 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).

adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[5] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.[6]

With respect to a knee impairment, the A.M.A., *Guides* provides a regional grid at Table 16-3.[7] The class of impairment (CDX) is determined based on specific diagnosis, and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for Functional History (GMFH) Table 16-6, Physical Examination (GMPE) Table 16-7 and Clinical Studies (GMCS) Table 16-8. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[8]

ANALYSIS

In the present case, OWCP issued a schedule award for a one percent permanent impairment to the left leg, based on the report of an OWCP medical adviser. The Board notes that an attending physician, Dr. Murrah, had opined in an October 26, 2010 report that appellant had an 11 percent impairment. This opinion is of little probative value to the issue presented. A medical opinion as to the degree of permanent impairment under the A.M.A., *Guides* must be supported by specific reference to tables or other provisions of the A.M.A., *Guides* and explanation as to how the provisions were applied.[9] Dr. Murrah's opinion as to an 11 percent impairment was not accompanied by any specific explanation as to how the impairment was calculated.

OWCP's medical adviser took findings from Dr. Murrah and applied the A.M.A., *Guides*. Table 16-3 is the knee regional grid, as noted above, and the medical adviser found a soft tissue knee injury of class 1 severity (mild problem). The grade C (default) impairment is one percent to the leg, but with respect to whether there should be an adjustment to the default impairment, the opinion of the medical adviser requires clarification. It is evident that the adjustment formula noted above was not properly applied by the medical adviser based on the grade modifiers identified. According to the medical adviser, the grade modifier for functional history grade modifier 2, and for physical examination the grade modifier 1 (with no clinical studies grade modifier applicable). As noted above, the formula would be (2-1) + (1-1) or +1. The medical adviser incorrectly divides by 3 and states the adjustment is 1/3, rounded to 0. The adjustment based on OWCP's medical adviser's determination was +1, or a grade D impairment (two percent under Table 16-3).[10]

There remains, however, an additional need for clarification as to clinical studies. The medical adviser found that clinical studies were not applicable. A grade modifier may be found

[5] *A. George Lampo*, 45 ECAB 441 (1994).

[6] FECA Bulletin No. 09-03 (issued March 15, 2009).

[7] A.M.A., *Guides* 509, Table 16-3.

[8] The net adjustment is up to +2 (grade E) or -2 (grade A).

[9] *See Mary L. Henninger*, 52 ECAB 408 (2001).

[10] A.M.A., *Guides* 509.

not applicable if it was used for the "primary placement" in the regional grid,[11] but the medical adviser referred to an operative note and MRI scan, which appeared to refer to the 2006 MRI scan and the 2007 surgery. The record indicated that Dr. Murrah reviewed a more recent MRI scan in his May 12, 2010 report. If the medical adviser is finding that a specific MRI scan or other clinical study was used for primary placement in the regional grid, and therefore not used for adjustment, then that finding should be made clear. Otherwise Table 16-8 should be applied and the GMCS determined.[12]

The case will be remanded to OWCP for a proper medical opinion on the issue presented. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case must be remanded to OWCP for additional development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2013 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 8, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

[11] *Id.* at 516.

[12] *Id*. at 519, Table 16-8.