

medial meniscus, tear of median meniscus of the left knee and left knee sprain. On February 2, 2011 he underwent surgical arthroscopy of the left knee with anterior cruciate ligament (ACL) reconstruction, partial medial meniscectomy and chondroplasty and debridement. Appellant stopped work and received disability compensation.

In an August 16, 2011 report, Dr. Mark H. Getelman, a Board-certified orthopedic surgeon, provided an accurate history of injury and noted that appellant underwent physical therapy and ACL reconstruction surgery. Upon examination, he observed that appellant's left knee was not buckling or locking. Extension was full and flexion was to 140 degrees. Dr. Getelman stated that appellant had reached maximum medical improvement. He reviewed the various charts and tables of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as they related to the knee and reported that appellant had two percent impairment to the whole person due to a partial medial meniscectomy and seven percent impairment for some mild residual laxity secondary to his cruciate ligament injury. Dr. Getelman further determined that, according to Table 17-33, appellant had a total of nine percent impairment, which converted to four percent impairment to the whole person.

In a December 6, 2011 report, Dr. Getelman noted that appellant was last seen on August 16, 2011 and found to be at maximum medical improvement. Upon examination of appellant's left knee, he observed no effusion, no instability to varus or valgus testing and no tenderness over the medial or lateral joint line. He was able to do active straight leg raise testing without lag. Dr. Getelman noted trace Lachman with a negative pivot shift. He reported that diagnostic testing revealed no asymmetric joint space narrowing and no fractures. Dr. Getelman diagnosed status post left knee strain and post ACL reconstruction of the left knee.

On December 14, 2011 appellant filed a schedule award claim.

On December 21, 2011 OWCP referred appellant's schedule award claim to the district medical adviser. In a December 30, 2011 report, Dr. Leonard A. Simpson, a Board-certified orthopedic surgeon and OWCP medical adviser, noted appellant's accepted conditions of left knee medial meniscal unspecified derangement and left medial meniscal tear. He reviewed appellant's history, including the statement of accepted facts and related that appellant underwent left knee arthroscopy with ACL ligament reconstruction and partial medial meniscectomy along with chondroplasty and debridement. Dr. Simpson stated that he reviewed Dr. Getelman's August 16, 2011 report and noted it as the date of maximum medical improvement. He indicated that, according to the sixth edition of the A.M.A., *Guides*, Table 16-3 for Knee Regional Grid-Lower Extremity Impairment, appellant was class 1 or two percent for post partial medial meniscectomy. Dr. Simpson indicated that appellant had grade modifiers -1 for functional history and -1 for physical examination. He reported that clinical studies were not applicable at the time of maximum medical improvement. Dr. Simpson calculated that appellant had a total net adjustment of -2, which placed appellant into class 1, Category A or a one percent lower extremity impairment. He stated that before any additional impairment could be calculated for residual ACL tear, additional clarification was needed regarding whether there was any clinical instability following the ACL reconstruction and if so, the degree of laxity. Dr. Simpson opined that if there was some mild laxity present appellant would qualify for a class 1 -- 10 percent default rating that would need to be modified according to the various Adjustment Grids. He concluded that at the present time he would assess that

appellant had one percent impairment of the left lower extremity but recommended additional clarification regarding appellant's residual ACL laxity following reconstruction and recommended that OWCP expand the work-related diagnosis to include a torn left ACL.

Appellant submitted April 5 and May 17, 2011 reports wherein Dr. Getelman noted that appellant was doing well following surgical arthroscopy of the left knee with ACL reconstruction, partial medial meniscectomy and debridement. Upon examination, Dr. Getelman observed that appellant's incisions were healing and that he had excellent stability. Extension of the left knee was full and flexion was to 140 degrees. Dr. Getelman reported that appellant was temporarily totally disabled until May 30, 2011 and would be able to return to full duty on May 31, 2011 if he used a custom molded ACL brace.

Appellant also submitted various physical therapy reports dated from March 31 to June 17, 2011.

By letter dated February 14, 2012, OWCP requested that Dr. Getelman review the medical adviser's report and clarify whether appellant had any residual ACL laxity following reconstruction.

In a February 7, 2013 report, Dr. Getelman stated that appellant was last seen on December 6, 2011 after experiencing increased pain in his right knee. He related that appellant returned to his usual occupation and only experienced occasional discomfort if he golfed back to back days. Upon examination of appellant's left knee, Dr. Getelman did not observe any effusion, instability to varus or valgus testing or tenderness over the medial or lateral joint line. He noted that appellant had trace Lachman with a negative pivot shift and was able to do an active straight leg raise without lag. Dr. Getelman reported that KT-100 testing revealed 10 millimeters (mm) on the left knee and 16 mm on the right knee, which was also reconstructed. He diagnosed status post left knee strain-resolved and status post ACL reconstruction, left knee with partial medial meniscectomy and debridement. Dr. Getelman stated that appellant was previously found to be at maximum medical improvement and that he could continue to work his usual and customary duties.

On March 19, 2013 OWCP expanded appellant's claim to include left ACL tear.

By decision dated March 22, 2013, OWCP granted a schedule award for one percent impairment of the left lower extremity based on Dr. Getelman's August 16, 2011 report and the medical adviser's December 30, 2011 report. The period ran for 2.88 weeks from August 16 to September 5, 2011.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a

single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as the appropriate standards for evaluating schedule losses.²

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).³ In determining impairment for lower extremity impairments under the sixth edition, an evaluator identifies 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).⁴ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁵

It is well established that, proceedings under FECA are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁶ Once OWCP undertakes the development of the record, it has the responsibility to do so in a proper manner to see that justice is done.⁷

ANALYSIS

OWCP accepted that appellant sustained left derangement of medial meniscus, tear of medial meniscus of the left knee, left knee sprain and left ACL tear as a result of a March 13, 2010 employment incident. On February 2, 2011 appellant underwent surgical arthroscopy of the left knee with ACL reconstruction, partial medial meniscectomy and chondroplasty and debridement. He filed a claim for schedule award. By decision March 22, 2013, OWCP granted a schedule award for one percent impairment of the left lower extremity.

The Board finds that this case is not in posture for decision regarding the degree of appellant's left lower extremity impairment due to his accepted left knee condition.

Along with his schedule award claim, appellant submitted various reports by Dr. Getelman. In an August 16, 2011 report, Dr. Getelman provided an accurate history of injury and noted that appellant underwent physical therapy and ACL reconstruction surgery. He conducted an examination and reported that appellant reached maximum medical improvement. Utilizing the A.M.A., *Guides*, Dr. Getelman determined that appellant had two percent impairment to the whole person due to a partial medial meniscectomy and seven percent impairment for some mild residual laxity secondary to his cruciate ligament injury. He further

² 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

³ A.M.A., *Guides* 3, 6 (6th ed. 2008).

⁴ *Id.* at 494-531.

⁵ *Id.* at 521.

⁶ *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

⁷ *Henry G. Flores, Jr.*, 43 ECAB 901 (1992); *John J. Carlone*, 41 ECAB 354 (1989).

determined that, according to Table 17-3, appellant had a total of four percent impairment to the whole person.

In the December 30, 2011 report, Dr. Simpson, the medical adviser, reviewed appellant's history, including the statement of accepted facts and related his accepted conditions of left knee medial meniscal unspecified derangement and left medial meniscal tear. He noted Dr. Getelman's August 16, 2011 report as the date of maximum medical improvement. Dr. Simpson reported that, according to the sixth edition of the A.M.A., *Guides*, appellant had one percent lower extremity permanent impairment. He stated that before any additional impairment could be calculated for the residual ACL tear, additional clarification was needed regarding whether there was any clinical instability following the ACL reconstruction and if so, the degree of laxity. Dr. Simpson concluded that at the present time he would assess that appellant had one percent impairment of the left lower extremity, but recommended additional clarification regarding appellant's residual ACL laxity following reconstruction and recommended that OWCP expand the work-related diagnosis to include a torn left ACL.

OWCP referred the medical adviser's report to Dr. Getelman to review the report and clarify whether appellant had any residual ACL laxity following reconstruction. In a February 7, 2013 report, Dr. Getelman conducted an examination and reported no instability to varus or valgus testing.

OWCP accepted appellant's claim to include left ACL tear and granted a schedule award for one percent impairment of the left lower extremity based on Dr. Getelman's August 16, 2011 report and the medical adviser's December 30, 2011 report.

The medical adviser had requested further clarification from the treating physician and for OWCP to accept the additional condition of ACL tear. By letter dated February 14, 2012, OWCP requested that Dr. Getelman clarify whether appellant had any residual ACL laxity following reconstruction. Following that report and the acceptance of the additional condition of ACL tear, it did not allow the medical adviser an opportunity to review Dr. Getelman's report or to consider the consequence of the accepted ACL tear.

Once OWCP undertakes development of the record, it must do so in a proper manner.⁸ This case must be remanded for further development.

On remand, OWCP should update the statement of accepted facts to reflect the newly accepted conditions of ACL tear and refer Dr. Getelman's February 7, 2013 report to OWCP's medical adviser for determination as to whether there were adequate findings for an increased impairment rating. After this and such other development as OWCP deems necessary, OWCP should issue a *de novo* decision on her entitlement to a schedule award.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2013 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with the decision of the Board.

Issued: April 9, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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