

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

C.S., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Reno, NV, Employer)

**Docket No. 14-1085
Issued: August 27, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 9, 2014 appellant filed a timely appeal of a February 10, 2014 decision of the Office of Workers' Compensation Programs (OWCP) concerning a schedule award. 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 this case.

ISSUE

The issue is whether appellant has established more than three percent permanent impairment of the right leg for which he received a schedule award.

FACTUAL HISTORY

On October 1, 2010 appellant, then a 34-year-old transportation security manager, injured his right knee when he struck it against the corner of a desk while getting out of his chair.

¹ 5 U.S.C. § 8101 *et seq.*

OWCP accepted the claim for internal derangement of the right knee and right knee enthesopathy. It authorized right knee arthroscopy with arthroscopic chondroplasty, lateral retinacular release, limited synovectomy and excision of prepatella bursa and loose bodies, which was performed on June 24, 2013.

On August 7, 2013 appellant filed a claim for a schedule award.

In an October 11, 2013 report, Dr. Mark Witt, a treating osteopath, listed a history of the October 1, 2010 injury and medical treatment. He determined that appellant had a four percent whole person permanent impairment using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Witt noted diagnoses of right knee patellar and trochlea chondromalacia, right knee synovitis with plica and right knee prepatella bursa with loose bodies and that the right knee surgery occurred on June 24, 2013. The range of motion for the right knee included 120 degrees flexion and 0 degrees extension. The physical examination of the right knee revealed no significant abnormalities, no varus or valgus deformity, negative Drawer's sign, no joint line pain and no varus laxity or valgus stress testing. Using Table 17-10, page 537 Dr. Witt found no ratable impairment for loss of range of motion. He found a ratable impairment of the quadriceps due to two centimeters atrophy of the right thigh using Table 17-6, page 530. Dr. Witt noted that there might be additional impairment for arthritic degenerative changes under Table 17-31, page 544; but, there were no x-rays to review. Therefore, he was unable to determine any impairment rating for arthritic degenerative changes under Table 17-31, page 544.

In a December 2, 2013 report, Dr. Arthur S. Harris, an OWCP medical adviser, concluded that appellant had a three percent right lower extremity impairment using Table 16-3, page 511 of the sixth edition of the A.M.A., *Guides*. He noted documented osteochondral damage to the patella undersurface at the time of surgery and noted "{CDX 1 C} (Table 16-3/Page 511)."

By decision dated February 10, 2014, OWCP granted appellant a schedule award for three percent right leg impairment. The period of the award was for 8.64 weeks and ran from October 11 to December 10, 2013.

LEGAL PRECEDENT

Under section 8107 of FECA² and section 10.404 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates 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

² *Id.* at § 8107.

³ 20 C.F.R. § 10.404

adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

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).⁵ Under the sixth edition, the 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).⁶ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.⁸

ANALYSIS

The Board finds that this case is not in posture for decision because the opinions of Drs. Harris and Witt are insufficient to establish the degree of permanent impairment.

On October 11, 2013 Dr. Witt provided a history of the injury, brief medical history and physical findings. Using the fifth edition of the A.M.A., *Guides*, he noted that appellant had no ratable impairment for right knee range of motion under Table 17-6, page 537. Dr. Witt found a four percent whole person impairment based on atrophy to the right thigh. It is well established that a schedule award is not payable under section 8107 of FECA for an impairment of the whole person. Further, Dr. Witt applied the standards of the fifth edition of the A.M.A., *Guides* that was not in effect at the time of his rating.⁹ His rating is of diminished probative value.

The Board has held that, in schedule award cases where an examining physician has provided a description of physical findings but failed to properly apply the A.M.A., *Guides*, an OWCP medical adviser may provide an impairment rating based on the reported physical

⁴ *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ A.M.A., *Guides* 3 (6th ed., 2009), section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁶ A.M.A., *Guides* 383-419 (6th ed., 2009).

⁷ *Id.* at page 411.

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

⁹ See *Gordon G. McNeill*, 42 ECAB 140 (1990); FECA Bulletin No. 09-03 (issued March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used. After May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate an impairment rating for schedule award purposes. *C.K.*, Docket No. 09-2371 (issued August 18, 2010).

findings and the A.M.A., *Guides*.¹⁰ OWCP's procedures state that when an OWCP medical adviser explains his or her opinion, shows values and computation of impairment based on the A.M.A., *Guides* and considers each of the reported findings of impairment, his or her opinion may constitute the weight of the medical opinion evidence.¹¹

The Board finds that the impairment rating provided by Dr. Harris does not constitute the weight of the medical opinion evidence because he did not provide sufficient explanation for his rating.¹² When determining appellant's right lower extremity rating, Dr. Harris concluded that appellant had three percent impairment using Table 16-3, page 511. There is no explanation or calculation other than noting osteochondral damage at the time of surgery with the notation "{CDX 1 C} (Table 16-3/Page 511)."¹³ It is unclear how the impairment rating was derived as Dr. Harris did not address the impairment class for the CDX or how the grade modifiers were utilized. It is also unclear from Table 16-3, page 511 which diagnostic criteria or key factor he used as the tables do not correspond to his description of osteochondral damage. The Board is unable to confirm that Dr. Harris properly followed the A.M.A., *Guides* or OWCP's procedures. The Board therefore finds that the impairment rating provided by the medical adviser is an insufficient basis for the schedule award.

On remand, OWCP should further develop the medical evidence to determine appellant's impairment in accordance with the A.M.A., *Guides*. Following this and any necessary further development, OWCP should issue a *de novo* decision regarding any employment-related permanent impairment.

CONCLUSION

The Board finds that this case is not in posture for a decision on the extent of permanent impairment to appellant's right leg

¹⁰ *Linda Beale*, 57 ECAB 429 (2006); *James Massenburg*, 29 ECAB 850 (1978).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.8(j) (September 2010).

¹² *Id.*

¹³ See A.M.A., *Guides* 497-500 (Diagnosis-Based Impairment for lower extremities).

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision.

Issued: August 27, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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