

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

C.K., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Lake City, FL, Employer)

Docket No. 14-1226
Issued: December 17, 2014

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 6, 2014 appellant, through her attorney, filed a timely appeal from a December 3, 2013 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 this case.²

ISSUE

The issue is whether appellant has established greater than 25 percent permanent impairment of the left lower extremity, for which she received a schedule award.

On appeal, counsel asserts that OWCP's December 3, 2013 schedule award decision is "contrary to law and fact."

¹ 5 U.S.C. § 8101 *et seq.*

² Although there is an April 24, 2014 OWCP decision within our jurisdiction, appellant has not appealed that decision.

FACTUAL HISTORY

OWCP accepted that on March 17, 2011 appellant, then a 52-year-old certified nurse assistant, sustained a left medial meniscus tear related to a prior meniscal tear accepted under File No. xxxxxx464. It later expanded the present claim to include osteoarthritis of the lower left leg.

Dr. William G. Pujadas, an attending Board-certified orthopedic surgeon, performed an arthroscopic partial left medial meniscectomy on October 6, 2011. As appellant had severe degenerative changes, he performed a total left knee arthroplasty on September 17, 2012, authorized by OWCP. Dr. Pujadas performed a closed manipulation of the left knee on March 21, 2013 to release postsurgical adhesions.

On September 26, 2013 appellant claimed a schedule award. In support of her claim, she submitted May 29, 2013 reports from Dr. Pujadas opining that she attained maximum medical improvement as of that date, with good strength, and range of motion. Appellant had moderate pain symptoms.

In an October 8, 2013 letter, OWCP advised appellant of the additional evidence needed to establish her schedule award claim, including an impairment rating from her attending physician utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*). Appellant was afforded 30 days to submit such evidence.

In response, counsel submitted a revised May 29, 2013 report from Dr. Pujadas, opining that appellant had 40 percent impairment of the left lower extremity according to unspecified portions of the A.M.A., *Guides*.

On November 20, 2013 an OWCP medical adviser reviewed the medical record and performed an impairment rating. He concurred with Dr. Pujadas that appellant attained maximum medical improvement as of May 29, 2013. The medical adviser used Table 16-3, page 511 of the sixth edition of the A.M.A., *Guides*.³ Appellant had a total knee arthroplasty with a good result which equaled a 25 percent impairment of the left lower extremity. The medical adviser found a class 2 with a default grade of C Class of Diagnosis (CDX), a grade 2 modifier for Functional History (GMFH), and a grade 2 modifier for findings on Physical Examination (GMPE). He noted that the grade modifier for Clinical Studies (GMCS) was not appropriate as appellant underwent total joint replacement. Applying these grade modifiers to the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), the medical adviser calculated that as (2-2) + (2-2) equaled zero, resulting in no applicable net adjustment. He therefore opined that appellant had 25 percent impairment of the left leg.

By decision dated December 3, 2013, OWCP granted appellant a schedule award for 25 percent impairment of the left lower extremity. The period of the award ran from May 29, 2013 to October 14, 2014.

³ Table 16-3, page 511 of the sixth edition of the A.M.A., *Guides* is titled "Knee Regional Grid -- Lower Extremity Impairments."

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the 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 a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* should be used to evaluate impairment ratings.⁶

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).⁷ Under the sixth edition, the evaluator identifies the impairment class for the Class of Diagnosis, which is then adjusted by grade modifiers based on Functional History, Physical Examination, and Clinical Studies.⁸ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

In some instances, an OWCP's medical adviser's opinion can constitute the weight of the medical evidence. This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*. In this instance, a detailed opinion by OWCP's medical adviser which gives a percentage based on reported findings and the A.M.A., *Guides* may constitute the weight of the medical evidence.⁹

ANALYSIS

Appellant claimed a schedule award for permanent impairment of the left lower extremity caused by a total knee arthroplasty related to accepted meniscal tears, and degenerative arthritis. She submitted May 29, 2013 reports from Dr. Pujadas, an attending Board-certified surgeon, finding that she had reached maximum medical improvement. Dr. Pujadas stated that appellant had 40 percent impairment of the left leg due to total knee arthroplasty according to the A.M.A., *Guides*, but did not set forth his reasoning.

⁴ 5 U.S.C. § 8107.

⁵ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁶ Federal (FECA) Procedure Manual Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808(5)(a) (issued February 2013).

⁷ A.M.A., *Guides* (6th ed. 2008), page 3, Section 1.3, "ICF: A Contemporary Model of Disablement."

⁸ *Id.* at pp 494-531 (6th ed. 2008).

⁹ *See supra* note 6 at *Developing and Evaluating Medical Evidence*, Chapter 2.810.8(j) (September 2010).

As appellant's physician was unable to provide an appropriate impairment rating, OWCP relied on the November 20, 2013 report of an OWCP medical adviser, who applied the appropriate sections of the sixth edition of the A.M.A., *Guides* to Dr. Pujadas' clinical findings. The medical adviser found 25 percent impairment of the left lower extremity due to status-post left knee arthroplasty with a good result. The medical adviser explained in detail how the applicable grade modifiers did not result in an adjustment to the class 2 grade C impairment rating.

The Board finds that OWCP properly relied on the medical adviser's November 20, 2013 impairment rating.¹⁰ The medical adviser properly applied the appropriate portions of the correct edition of the A.M.A., *Guides* to Dr. Pujadas' clinical findings.¹¹ Therefore, OWCP's December 3, 2013 decision finding that appellant sustained 25 percent impairment of the left lower extremity was proper under the facts and circumstances of this case.

On appeal, counsel asserts that OWCP's December 3, 2013 schedule award decision is "contrary to law and fact." As stated above, OWCP's determination of a 25 percent impairment of the left lower extremity was based on the correct application of the A.M.A., *Guides* to the findings provided by appellant's physician.

Appellant may request a schedule award or increased schedule award regarding the left lower extremity, based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established that she sustained more than 25 percent impairment of the left lower extremity, for which she received a schedule award.

¹⁰ *See id.*

¹¹ *Supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 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