



## **FACTUAL HISTORY**

OWCP accepted that on June 5, 2010 appellant, then a 32-year-old letter carrier, sustained a dog bite, staphylococcal infection and cellulitis of the right calf while in the performance of duty. He filed compensation claims for intermittent periods of disability commencing July 21, 2010 and he received compensation for temporary total disability.

By decision dated January 27, 2011, OWCP terminated appellant's wage-loss and medical compensation benefits. It denied expansion of the claim to include a right knee condition and right knee surgery as the medical evidence of record was not sufficient to establish a causal relationship to the June 5, 2010 employment injury.

Appellant returned to full-duty work on May 4, 2011.

On August 15, 2011 appellant, through his attorney, filed a claim for a schedule award.

In reports dated November 2, 2010 through May 3, 2011, Dr. Richard C. Lehman, a Board-certified orthopedic surgeon, opined that appellant's right knee pain was caused by a dog bite. Appellant also had patellofemoral symptoms and discomfort since the resolution of his infection. On February 3, 2011 Dr. Lehman opined that appellant had a compensable lesion based on the dog bite and subsequent cellulitis.

On November 4, 2010 Dr. Brian J. Cole, a Board-certified orthopedic surgeon, diagnosed status post right proximal tibia dog bite with right knee-sided medial knee pain. He indicated that appellant also appeared to have elements of plica syndrome.

In reports dated June 21 through December 17, 2010, Dr. Edmond K. Ng, a Board-certified general surgeon, diagnosed open wound of the knee and late effect of open wound of extremities without mention of tendon injury. On December 17, 2010 he stated that appellant had a significant soft tissue infection and that his initial evaluation could not be complete on any bony or joint injury because it was masked by the soft tissue injury and infection.

In an August 16, 2011 letter, OWCP notified appellant of the deficiencies of his claim. It afforded him 30 days for the submission of additional evidence addresses permanent impairment.

Appellant submitted a September 1, 2011 report from Dr. Lehman, who opined that the history of injury, diagnostic studies and the objective findings on physical examination supported 11 percent permanent impairment of the right lower extremity as a result of the employment injury. Dr. Lehman determined that the date of maximum medical improvement was September 1, 2011. In an addendum report dated September 13, 2011, he stated that he used the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), to rate impairment. Dr. Lehman cited to Table 16-3,<sup>3</sup> page 509, to find that appellant had a four percent permanent impairment with regard to muscle tendon and soft tissue, no ratable impairment with regard to the bone and ligament of his right knee and a seven percent permanent impairment with regard to arthritis, patellofemoral arthritis

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<sup>3</sup> Table 16-3, pages 509-11 of the sixth edition of the A.M.A., *Guides* is entitled *Knee Regional Grid -- Lower Extremity Impairments*.

and cartilage defect of the patellofemoral articulation. He concluded that this resulted in a total of 11 percent permanent impairment to the right leg.

On September 28, 2011 Dr. Daniel D. Zimmerman, an OWCP medical adviser Board-certified in internal medicine and infectious disease, reviewed the medical evidence. He indicated that Dr. Lehman improperly applied Table 16-3, *Knee Regional Grid*, of the A.M.A., *Guides* which relates to knee conditions. OWCP had not accepted any knee joint diagnosis in appellant's case. The medical adviser explained that the accepted conditions could not have caused internal knee joint pathology so the rating by Dr. Lehman for patellofemoral arthritis and cartilage defect was not a possibility. He indicated that if a grid rating is used, it must be explained how the rating was determined using the grade modifiers tables. The medical adviser found that Dr. Lehman provided no information regarding the impact of the grade modifiers and incorrectly determined appellant's impairment from the grid rating.

OWCP referred appellant to Dr. David H. Trotter, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a December 15, 2011 report, Dr. Trotter reviewed appellant's medical history, medical records and provided findings on physical examination. He found a full range-of-motion of the lower extremities, except for the right knee which had inconsistent range-of-motion upon active request for such motion. Appellant's right knee revealed a healed puncture wound just distal to the right knee joint. There was also a longitudinal area distal to that along the medial aspect of the knee where he underwent surgical intervention for infection. There was no reproducible tenderness over the joint lines or lateral aspect of the right knee. Dr. Trotter determined that according to the sixth edition of the A.M.A., *Guides* there was no evidence of permanent impairment of the right lower extremity. He found no consistent evidence of subjective or objective findings revealing any residuals at the level of the knee with regard to diagnosis-based or range-of-motion impairment. There was no evidence of complex regional pain syndrome or neurologic abnormality. Dr. Trotter concluded that appellant had no ratable impairment under the A.M.A., *Guides*.

On January 30, 2012 Dr. David H. Garelick, a Board-certified orthopedic surgeon, and medical adviser, reviewed the evidence of record. He found that appellant's soft tissue wound had healed without residuals. Dr. Garelick found that appellant's knee pain was primarily subjective in nature without objective testing to support any internal derangement and noted that OWCP had not accepted a knee condition as employment related. He concurred with Dr. Trotter that there was no ratable impairment of the right lower extremity and determined that the date of maximum medical improvement was December 7, 2010.

Appellant submitted a June 5, 2010 emergency room report indicating that he was attacked by a German shepherd that same day.

By decision dated November 6, 2012, OWCP denied appellant's schedule award claim on the basis that the medical evidence did not establish any ratable impairment of a scheduled member.

On November 8, 2012 appellant, through his attorney, requested an oral hearing before an OWCP hearing representative. He submitted hospital records from June 2010, a computerized tomography scan of the right lower extremity dated June 7, 2010 and a surgical report from

Dr. Ng noting that appellant underwent an open incision, irrigation and packing of the right lower extremity gas forming infection plane on June 7, 2010.

On March 14, 2013 an oral hearing was held before an OWCP hearing representative.

By decision dated May 30, 2013, OWCP's hearing representative affirmed the November 6, 2012 decision. She found that the weight of medical opinion did not establish any impairment of appellant's right leg due to the accepted July 5, 2010 dog bite.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim, including that he or she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.<sup>4</sup>

The schedule award provision of FECA<sup>5</sup> and its implementing regulations<sup>6</sup> 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup> The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.<sup>8</sup> It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.<sup>9</sup> A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.<sup>10</sup>

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<sup>4</sup> See *Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Id.*

<sup>8</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>9</sup> See *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (September 1995). This portion of OWCP's procedure provides that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

<sup>10</sup> See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

A schedule award is not payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.<sup>11</sup> As neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.<sup>12</sup> However, as FECA makes provision for the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine, if the medical evidence establishes impairment as a result of the employment injury.<sup>13</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>14</sup>

### ANALYSIS

The Board finds that the medical evidence of record fails to establish that appellant sustained any permanent impairment to his right leg causally related to the June 5, 2010 employment injury. OWCP accepted appellant's claim for a dog bite, staphylococcal infection and cellulitis of the right calf. The weight of medical opinion does not establish that he sustained permanent impairment to his right lower extremity due to the accepted injuries.

The Board finds that OWCP properly relied on a January 30, 2012 report from Dr. Garelick, an OWCP medical adviser, who concluded that appellant had no permanent impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*. Appellant's attending physician, Dr. Lehman, did not properly apply the A.M.A., *Guides* when rating 11 percent impairment of the right leg. His reports were based on diagnosed conditions not accepted by OWCP as causally related to the accepted injury. OWCP referred appellant to Dr. Trotter, a Board-certified orthopedic surgeon, to determine the extent and degree of any employment-related impairment. Dr. Trotter properly reviewed the medical record and found no basis for rating impairment to a scheduled member of the body.<sup>15</sup> Dr. Garelick reviewed a December 15, 2011 assessment of Dr. Trotter and found no evidence of any consistent subjective

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<sup>11</sup> See *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>12</sup> See *id.* FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

<sup>13</sup> See *George E. Williams*, 44 ECAB 530 (1993). In 1966, amendments to FECA modified the schedule award provision to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.

<sup>14</sup> See *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>15</sup> The Board notes that it is appropriate for an OWCP medical adviser to review the clinical findings of the treating physician to determine the permanent impairment. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.5(c) (September 1995); *Richard R. LeMay*, 56 ECAB 341 (2006).

or objective findings revealing impairment based on the accepted diagnosis or range of motion. There was no reproducible tenderness over the joint lines or lateral aspect of the right knee and no evidence of complex regional pain syndrome or neurologic abnormality. Dr. Garelick found that appellant's soft tissue wound had healed without residuals. He found that appellant's knee pain was primarily subjective in nature without objective testing to support any internal derangement. Dr. Garelick noted that OWCP had not accepted a knee condition as employment related. He concurred with Dr. Trotter that there was no ratable impairment of the right lower extremity. Dr. Garelick determined that the date of maximum medical improvement was December 7, 2010. The Board finds that he properly concluded that there was no medical evidence of impairment to the right lower extremity resulting from the accepted conditions and that, therefore, there was no ratable impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*.

Appellant did not submit sufficient medical evidence to establish that he sustained a permanent impairment to a specified member, organ or function of the body listed in FECA or its implementing regulations. The medical evidence of record supports that he has no right lower extremity impairment. The Board finds that appellant is not entitled to a schedule award as a result of his employment-related accepted right calf conditions.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. For the reasons stated, the Board finds that the weight of medical evidence does not establish permanent impairment.

Appellant may request a schedule award or increased schedule award 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 any ratable right lower extremity impairment related to his accepted right calf injuries entitling him to a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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