



accepted the claim for right leg and knee sprain and right medial meniscus tear. It authorized right knee arthroscopic surgery which was performed on February 21, 2013.

On November 17, 2012 appellant filed a claim for a schedule award.

In a May 18, 2013 report, Dr. Anatoly Rozman, an examining Board-certified physiatrist, concluded that appellant had an eight percent right lower extremity permanent impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In reaching this determination, he used Table 16-3,<sup>2</sup> page 510 to find a five percent lower extremity impairment based on appellant's intercondylar fracture and finding of a class 1 impairment. Next, using Table 16-8,<sup>3</sup> page 519, Dr. Rozman found a grade modifier of one based on Clinical Studies (GMCS) confirming the diagnosis. Using Table 16-7, page 517, he found a grade modifier of one each for Physical Examination (GMPE) and Functional History (GMFH). The net adjustment formula resulted in no change so that appellant had a five percent impairment. Dr. Rozman then utilized Table 16-3,<sup>4</sup> page 511 to find a class 1 or three percent impairment for appellant's chondromalacia. Using Table 16-6 and Table 16-7, pages 516-17, respectively, he found a grade modifier of one for physical examination, a grade modifier of one for clinical studies and a grade modifier of one for functional history, which resulted in adjusted grade modifier of zero. Lastly, Dr. Rozman combined the five percent impairment rating for femoral condyle fracture and three percent impairment for chondromalacia patella which resulted in a total eight percent right lower extremity impairment.

In a September 2, 2013 report, OWCP's medical adviser concluded that appellant had a seven percent right lower extremity impairment. In reaching this determination, he used Table 16-3, page 511 for a full thickness articular cartilage defect. The medical adviser found no change using the net adjustment formula.

By decision dated September 23, 2013, OWCP granted appellant a schedule award for a seven percent impairment of the right lower extremity. The number of weeks was 20.16 and the award ran from October 19, 2012 to March 9, 2013.

### **LEGAL PRECEDENT**

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

---

<sup>2</sup> Dr. Rozman noted the table as 15-3, which appears to be a typographical error as page 510 is associated with Table 16-3 and pertains to the lower extremity, the subject of the schedule award appeal.

<sup>3</sup> In the report Dr. Rozman referenced Table 15-8 at page 519. This appears to be a typographical error as Table 16-8 is located at page 519.

<sup>4</sup> The doctor referenced Table 16-10, page 511 in his report, which appears to be a typographical error. Table 16-3 is the table located at page 511.

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

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> Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>8</sup> 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).<sup>9</sup>

In addressing lower extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history, physical examination and clinical studies. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>10</sup>

OWCP 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 the medical adviser providing rationale for the percentage of impairment specified.<sup>11</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>12</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.<sup>13</sup>

---

<sup>7</sup> *Id.* See *C.M.*, Docket No. 09-1268 (issued January 22, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claim*, Chapter 2.808.5 (February 2013); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>9</sup> A.M.A., *Guides* (6<sup>th</sup> ed., 2009), page 3, section 1.3, ICF: A Contemporary Model of Disablement.

<sup>10</sup> *Id.* at 521. *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

<sup>12</sup> 5 U.S.C. § 8123(a). See *S.R.*, Docket No. 09-2332 (issued August 16, 2010); *Y.A.*, 59 ECAB 701 (2008); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>13</sup> *A.R.*, Docket No. 09-1566 (issued June 2, 2010); *M.S.*, 58 ECAB 328 (2007); *Bryan O. Crane*, 56 ECAB 713 (2005).

### ANALYSIS

OWCP accepted the claim for right leg and knee sprain and right medial meniscus tear. By decision dated September 23, 2013, it granted appellant a schedule award for a seven percent right lower extremity impairment based upon OWCP's medical adviser's report.

In a September 2, 2013 report, an OWCP medical adviser advised that based on the A.M.A., *Guides* appellant had seven percent impairment of the right lower extremity. Using Table 16-3, Knee Regional Grid, Patellofemoral Arthritis, appellant was a class 1, mild problem, with a seven percent impairment.

By contrast, in a May 18, 2013 report, Dr. Rozman opined that appellant had a total eight percent impairment of the right lower extremity. He opined that, under Table 16-3, Knee Regional Grid, Supracondylar or intercondylar fracture, appellant was a class with a default value C or five percent impairment. Dr. Rozman noted that the net adjustment formula resulted in no change. Next, he utilized Table 16-3, page 511 to find that appellant's chondromalacia was a class 1 or three percent impairment. Using the net adjustment formula, Dr. Rozman found the grade modifier was zero. He then determined that appellant had a total eight percent right lower extremity impairment by combining the impairment ratings for the femoral condyle fracture and the chondromalcial patella.

The Board finds there is an unresolved conflict in the medical opinion evidence concerning the extent of permanent impairment arising from appellant's accepted employment injury. Both OWCP's medical adviser and Dr. Rozman used Table 16-3 of A.M.A., *Guides* to come to differing calculations as to appellant's permanent impairment of the right lower extremity. Therefore, in order to resolve the conflict in the medical opinions, the case will be remanded to OWCP for referral of the case record, including a statement of accepted facts and, if necessary, appellant, to an impartial medical specialist for a determination regarding the extent of her right lower extremity impairment as determined in accordance with the relevant standards of the A.M.A., *Guides*. After such further development as OWCP deems necessary, a *de novo* decision should be issued regarding the extent of appellant's right lower extremity impairment.

### CONCLUSION

The Board finds that this case is not in posture for a decision due to an unresolved conflict in the medical opinion evidence regarding the percentage of impairment of the right lower extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 23, 2013 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: July 3, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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