

consequential injury to the right knee.² On April 8, 1986 appellant underwent a partial medial meniscectomy of the left knee. On February 23, 2010 he underwent a total right knee replacement.³

By decision dated May 5, 1988, OWCP granted appellant a schedule award for a 10 percent permanent impairment of the left leg.⁴ The period of the award ran for 28.80 weeks from December 16, 1986 to July 5, 1987.

In a decision dated June 25, 1991, OWCP granted appellant an additional schedule award for a 12 percent permanent impairment of the left leg.⁵ The period of the award ran for 34.56 weeks from June 14, 1991 to February 10, 1992. By decision dated June 5, 1995, OWCP denied appellant's claim for an increased schedule award for the left lower extremity.

On April 9, 2013 appellant underwent an authorized left total knee replacement arthroplasty.

In an impairment evaluation dated September 12, 2013, Dr. Gregory D. Powell, a Board-certified physiatrist, diagnosed knee arthritis with a total knee replacement. He discussed appellant's complaints of continuous mild-to-moderate left knee pain without crepitus, loss of motion, joint instability, locking or weakness. On examination Dr. Powell found mild valgus and a trace of varus laxity of the left knee. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*), he identified a class 2 impairment due to a total knee replacement arthroplasty using the knee regional grid set forth in Table 16-3, which yielded a default value of 25 percent. Dr. Powell applied a grade modifier of one for functional history due to appellant's antalgic gait, a grade modifier of one for physical examination findings of mild laxity and found that a grade modifier for clinical studies was not applicable. He used the net adjustment formula, (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (1-2) + (1-2) + (0-2) = -4, which he found yielded a 21 percent permanent impairment of the left lower extremity.

² By decision dated December 1, 1988, OWCP found that appellant had not established that he sustained a consequential injury to the right knee due to his February 14, 1986 employment injury. On March 28, 1989 it determined that he had not established that he sustained a recurrence of disability beginning January 31, 1989. On May 9, 1989 OWCP vacated its March 28, 1989 decision and accepted that he sustained a recurrence of disability. On June 12, 1989 it vacated its December 1, 1988 decision and accepted that appellant sustained a consequential injury to his right knee.

³ In a decision dated August 10, 1989, OWCP denied appellant's claim for a schedule award for the right lower extremity. On January 2, 1990, it vacated the August 10, 1989 decision. In decisions dated January 23 and November 5, 1990, OWCP granted appellant a schedule award for an 18 percent permanent impairment of the right lower extremity. By decision dated June 15, 1993, it granted him a schedule award for an additional eight percent permanent impairment of the right lower extremity. In a decision dated January 6, 2011, OWCP granted appellant a schedule award for an additional five percent permanent impairment of the right lower extremity.

⁴ In a decision dated November 18, 1986, OWCP denied appellant's claim for a schedule award after finding that the medical evidence was insufficient to show that he had a permanent impairment of the left lower extremity.

⁵ By decision dated August 26, 1994, OWCP reduced appellant's compensation to zero after finding that his actual earnings as a modified carrier effective May 31, 1994 fairly and reasonably represented his wage-earning capacity.

On October 17, 2013 appellant filed a claim for an increased schedule award. On October 30, 2013 an OWCP medical adviser reviewed Dr. Powell's September 12, 2013 report and agreed with his findings. He noted that appellant had already received schedule awards totaling 22 percent impairment and thus that he was not entitled to an additional schedule award.

By decision dated December 19, 2013, OWCP denied appellant's claim for an additional schedule award.

On appeal appellant notes that OWCP granted him a schedule award for 22 percent permanent impairment after arthroscopic surgery on his left knee. He underwent a total knee replacement in 2013 and now had a limp and used a cane. Appellant argues that his left knee condition had worsened.

LEGAL PRECEDENT

The schedule award provision of FECA,⁶ and its implementing federal regulations,⁷ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁸ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁹

The sixth edition requires identifying 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).¹⁰ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

Where a claimant has previously received a schedule award and subsequently claims an additional schedule award due to a worsening of his or her condition, the claimant bears the burden of proof to establish a greater impairment causally related to the employment injury.¹¹

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.* at § 10.404(a).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹⁰ A.M.A., *Guides* 494-531.

¹¹ *See Edward W. Spohr*, 54 ECAB 806 (2003).

ANALYSIS

OWCP accepted that appellant sustained internal derangement and chondromalacia patella of the left knee due to a February 14, 1986 employment injury. It further accepted that he sustained a consequential right knee injury. In decisions dated May 5, 1988 and June 25, 1991, OWCP granted appellant schedule awards totaling a 22 percent permanent impairment of the left lower extremity.

On April 9, 2013 appellant underwent a total left knee replacement arthroplasty. He filed a claim for an increased schedule award. In an impairment evaluation dated September 12, 2013, Dr. Powell found mild left knee laxity without crepitus, weakness or loss of motion. He noted that appellant experienced mild-to-moderate pain in his left knee. Dr. Powell diagnosed knee arthritis and a total knee replacement. Citing Table 16-3 of the A.M.A., *Guides*, he determined that appellant had a class 2 impairment due to a total knee replacement arthroplasty, which yielded a default value of 25 percent. Dr. Powell rated a grade modifier of one for functional history based on his antalgic gait, a grade modifier of one for physical examination findings of mild laxity and no grade modifier for clinical studies as there were “no pertinent studies.” He used the net adjustment formula, (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (1-2) + (1-2) + (0-2) which he found yielded a result of -4. An OWCP medical adviser concurred with Dr. Powell’s findings. However, as Dr. Powell found that clinical studies were not applicable, he should not have included it in the net adjustment formula.¹² Consequently, the formula should be (GMFH-CDX) + (GMPE-CDX), or (1-2) + (1-2) = -2. A movement from the default value of 25 two places to the left yields an impairment of 21 percent according to the Knee Regional Grid set forth in Table 16-3. Consequently, Dr. Powell’s inclusion of clinical studies in the net adjustment formula does not affect the final impairment rating. There is no evidence of record to establish that appellant has more than a 22 percent permanent impairment of the left lower extremity. Therefore, he is not entitled to an additional schedule award.

On appeal appellant contends that his condition worsened following his 2013 left knee replacement. He has the burden, however, to submit medical evidence supporting the degree of permanent impairment.¹³ Appellant’s lay opinion on the extent of his impairment is insufficient to discharge his burden of proof as the Board has held that lay individuals are not competent to render a medical opinion.¹⁴

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.

¹² See generally A.M.A., *Guides* 521, which provides, “If a particular criterion such as range of motion was used to determine impairment class, it may not be used again to determine the grade and is disregarded in the impairment calculation.”

¹³ See *D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

¹⁴ *Gloria J. McPherson*, 51 ECAB 441 (2000).

CONCLUSION

The Board finds that appellant has not established that he has more than a 22 percent permanent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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