

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

M.C., Appellant

and

**DEPARTMENT OF THE NAVY, PUGET
SOUND NAVAL SHIPYARD, Bremerton, WA,
Employer**

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**Docket No. 14-1348
Issued: October 2, 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 May 16, 2014 appellant timely appealed the January 27, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding 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.²

ISSUE

The issue is whether appellant has greater than three percent impairment of the right leg.

¹ 5 U.S.C. §§ 8101-8193 (2006).

² The record on appeal contains evidence received after OWCP issued its January 27, 2014 decision. The Board is precluded from considering evidence that was not of record at the time OWCP issued its final decision. 20 C.F.R. § 501.2(c)(1) (2012).

FACTUAL HISTORY

Appellant, a 58-year-old former welder, has an accepted claim for chondromalacia of the right patella, which arose on or about December 3, 2003. OWCP approved an October 21, 2005 right knee arthroscopic procedure, which included debridement of a grade 2 to 3 patellar articular cartilage lesion. Appellant's surgeon released him to perform limited-duty work effective November 3, 2005. In October 2008, the employing establishment assigned appellant to the position of material handler/expediter.³ On June 25, 2013 appellant filed a claim for a schedule award (Form CA-7).

Dr. Michael S. McManus, an attending physician Board-certified in occupational medicine, provided a July 17, 2013 impairment rating under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008). He diagnosed secondary arthritis and chondromalacia, primarily involving the patellofemoral compartment of the right knee. Dr. McManus also noted that appellant was status post chondroplasty of the patella. According to him, appellant reached maximum medical improvement as of June 24, 2013, which was the date of his most recent prior examination. He rated 10 percent right lower extremity impairment under Table 16-3, Knee Regional Grid (LEI), A.M.A., *Guides* 511 (6th ed. 2008). Dr. McManus used the diagnosis of patellofemoral arthritis with a two mm cartilage interval. He indicated that appellant's latest right knee x-ray, dated June 24, 2013, revealed cartilage interval narrowing to 2.3 mm in the lateral aspect of the patellofemoral compartment.⁴ This represented class 1 impairment (CDX 1) with a default (grade C) lower extremity rating of 10 percent. With respect to grade modifiers, Dr. McManus assigned a value of 1 for Functional History (GMFH 1) and Physical Examination (GMPE 1). He did not include a grade modifier for Clinical Studies (GMCS) because appellant's x-ray results formed the basis of the class assignment. Dr. McManus calculated a net adjustment of zero.⁵ Accordingly, the final right leg impairment rating was 10 percent (grade C).

On August 5, 2013 Dr. Kenneth D. Sawyer, a district medical adviser, reviewed the case record and the July 17, 2013 impairment rating of Dr. McManus. He disagreed with the 10 percent rating for patellofemoral arthritis with a two-millimeter (mm) cartilage interval. Dr. Sawyer noted that the x-rays of record did not describe any narrowing of the patellofemoral joint space or provide any actual measurement. Instead of rating appellant based on cartilage interval narrowing, Dr. Sawyer relied on a diagnosis of patellofemoral arthritis with full-thickness articular cartilage defect. Under Table 16-3, A.M.A., *Guides* 511 (6th ed. 2008), this diagnosis represented class 1 impairment with a default rating of three percent. Dr. Sawyer otherwise concurred with Dr. McManus' assignment of grade modifiers and his net adjustment calculation of zero (0). He found that appellant reached maximum medical improvement as of July 17, 2013, the date of Dr. McManus' examination.

³ Appellant served in this capacity until he retired on July 31, 2013.

⁴ The June 24, 2013 x-rays consisted of four views of the right knee read by Dr. Donna M. White, a radiologist, who noted mild degenerative arthritis with no significant interval change.

⁵ Net Adjustment (0) = (GMFH 1-CDX 1) + (GMPE 1-CDX 1). See section 16.3d, A.M.A., *Guides* 521 (6th ed. 2008).

On August 26, 2013 OWCP granted a schedule award for three percent right leg impairment. The award covered a period of 8.64 weeks from July 17 through September 15, 2013.

Appellant timely requested a review of the written record. He did not submit any additional medical evidence.

By decision dated January 27, 2014, the hearing representative affirmed the August 26, 2013 schedule award for three percent right leg impairment.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁶ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁷ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁸

ANALYSIS

Appellant's physician, Dr. McManus, provided a July 17, 2013 right lower extremity impairment rating of 10 percent. His finding was based on a diagnosis of patellofemoral arthritis with a two mm cartilage interval. Dr. McManus stated that appellant's June 24, 2013 right knee x-ray revealed a cartilage interval of 2.3 mm in the lateral aspect of the patellofemoral compartment. These films were obtained by Dr. White whose impression was mild degenerative arthritis. She noted "no significant interval change...." Dr. White did not list any specific measurement that would support the rating by Dr. McManus. Dr. Sawyer correctly noted there were no x-ray reports that included actual measurements of patellofemoral joint space narrowing. Although it is possible that Dr. McManus read appellant's June 24, 2013 right knee x-ray and personally measured the patellofemoral compartment cartilage interval, the source of his "2.3 mm" finding is not apparent from the evidence of record. Under the circumstances, Dr. Sawyer reasonably questioned Dr. McManus' impairment rating based on a diagnosis of patellofemoral arthritis with a two mm cartilage interval.

The Board finds that Dr. Sawyer's August 5, 2013 impairment rating conforms to the A.M.A., *Guides* (6th ed. 2008) and represents the weight of the medical evidence regarding the

⁶ For complete loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

⁷ 20 C.F.R. § 10.404.

⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

extent of appellant's right lower extremity impairment. Dr. Sawyer's rating, which was based on a diagnosis of patellofemoral arthritis with full-thickness articular cartilage defect, is supported by the record. Furthermore, he concurred with Dr. McManus' assignment of grade modifiers and his net adjustment calculation.⁹ This resulted in a final rating of three percent right leg impairment under Table 16-3, Knee Regional Grid (LEI), A.M.A., *Guides* 511 (6th ed. 2008). Accordingly, the medical evidence of record does not establish right leg impairment greater than three percent.

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

Appellant has not demonstrated that he has greater than three percent impairment of the right leg.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 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

⁹ See *supra* note 6.