

knee on May 12, 2007. OWCP accepted a left knee contusion. Appellant filed an occupational disease claim for a left knee condition on September 20, 2007 under case number xxxxxx367, which OWCP accepted for dislocation of the left patella.

On December 23, 2008 appellant underwent arthroscopic surgery for ligament reconstruction. She filed an occupational disease claim for a left knee condition on June 28, 2009 under case number xxxxxx815, which OWCP accepted for acute exacerbation of the left medial collateral ligament sprain. The claims were combined under case number xxxxxx819.

In a November 12, 2009 report, Dr. Arthur Becan, Board-certified in orthopedic surgery, found that appellant had an 18 percent permanent impairment of the left leg pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) sixth edition. On examination, appellant had complaint of daily left knee pain, swelling and stiffness of intermittent severity. Dr. Becan stated that she also had complaint of instability with locking of her left knee. He diagnosed post-traumatic internal derangement to the left knee, recurrent patellofemoral instability to the left knee and post-traumatic chondromalacia patella. Dr. Becan found that the date of maximum medical improvement was November 12, 2009.

On March 11, 2010 appellant claimed a schedule award based on the partial loss of use of her left lower extremity.

In a June 10, 2010 report, Dr. Henry J. Magliato, Board-certified in orthopedic surgery and an OWCP medical adviser, found that appellant had an eight percent permanent impairment of the left lower extremity under the A.M.A., *Guides*.

On July 23, 2010 OWCP granted appellant a schedule award for an eight percent permanent impairment of the left leg for the period November 12, 2009 to April 13, 2010, for a total of 23.04 weeks of compensation.

By decision dated December 20, 2010, an OWCP hearing representative affirmed the July 23, 2010 decision. In a December 6, 2011 decision, the Board set aside OWCP's December 20, 2010 decision, finding that there was a conflict in medical opinion between Dr. Becan and Dr. Magliato, regarding the extent of permanent impairment to appellant's left knee. The facts of this case as set forth in the Board's December 6, 2011 decision are herein incorporated by reference.

On December 21, 2011 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability on November 29, 2011 which was causally related to her accepted left knee conditions. She stated on the form that the recurrence was the result of the employing establishment no longer having light-duty work available for her, within her treating physician's prescribed restrictions.

In order to resolve the conflict in medical evidence, OWCP referred appellant for a referee impairment evaluation with Dr. Ronald E. Gennace, Board-certified in orthopedic surgery and selected as the impartial medical examiner. In a February 21, 2012 report, Dr. Gennace found that appellant had a 16 percent permanent impairment of the left lower extremity under the A.M.A., *Guides*. He stated that appellant had reached maximum benefit from treatment and that he considered her last visit in 2009 with her treating physician as the

cutoff point. Dr. Gennace stated that she had attained an incomplete recovery with contusion and a subluxation of the knee and indicated that any further treatment was of a palliative nature.

On April 19, 2012 OWCP accepted appellant's claim for a recurrence of disability.

In an August 5, 2012 report, Dr. Andrew A. Merola, an OWCP medical adviser and a specialist in orthopedic surgery, agreed with Dr. Gennace's 16 percent impairment rating for appellant's left leg. He found that the date of maximum medical improvement was February 21, 2012, within a reasonable degree of medical certainty, as that was the date of Dr. Gennace's examination upon which the physical findings were used to assess the lower extremity impairment rating.

By decision dated November 9, 2012, OWCP granted appellant a schedule award for an additional eight percent impairment to the left leg. This award covered the period October 6, 2012 to March 16, 2013, for an additional 23.04 weeks of compensation. OWCP found that maximum medical improvement was February 21, 2012, in accordance with the finding of Dr. Merola.

By letter dated November 15, 2012, appellant's attorney requested an oral hearing, which was held on February 6, 2013. At the hearing, counsel challenged OWCP's finding that the date of maximum medical improvement was February 21, 2012, the date Dr. Gennace issued his report. Counsel argued that there was no reason to disturb the original date of maximum medical improvement, November 12, 2009 and, that appellant had since received no additional treatment. He contended that the November 9, 2012 eight percent schedule award payment should have commenced on April 23, 2010, the date payments for the first award ended. As a result of the 2012 date, no schedule award payment was issued because appellant received payments for wage-loss compensation pursuant to her recurrence of disability claim, which became effective on November 29, 2011. Counsel contended that, the medical adviser, Dr. Merola, gave no rationale for selecting the date of maximum medical improvement.

By decision dated March 20, 2013, the hearing representative set aside the November 9, 2012 schedule award decision, finding that the date of maximum medical improvement was not sufficiently explained. She remanded the case to the district office to obtain clarification from Dr. Merola.

In a April 8, 2013 report, Dr. Merola explained that he chose the date of Dr. Gennace's examination as the date of maximum medical improvement for appellant's supplemental schedule award because that was the date upon which the physical examination and findings were obtained which supported the additional left leg impairment rating. He advised that Dr. Gennace determined that, since the last day of her treatment in 2009, she had achieved an incomplete recovery with contusion and a subluxation of the knee.

By decision dated April 17, 2013, OWCP found that the medical evidence supported a finding that the date of maximum medical improvement was February 21, 2012, the date of Dr. Gennace's impartial medical report. It found that Dr. Merola had sufficiently clarified the rationale for choosing February 21, 2012 as the date for the supplemental schedule award. OWCP further noted that a schedule award is payable consecutively but not concurrently with

wage loss for the same injury; therefore the starting date of the schedule award was adjusted to October 6, 2012 because appellant received compensation for disability through October 5, 2012.

By letter dated August 22, 2013, appellant's attorney requested a review of the written record. He reiterated his arguments regarding the date of maximum medical improvement and argued that there was a conflict between Dr. Merola and Dr. Becan as to this issue, which required referral to an impartial medical examiner.

By decision dated November 12, 2013, an OWCP hearing representative affirmed the April 17, 2013 decision.³

LEGAL PRECEDENT

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.⁴ Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁵

Permanent impairment is rated according to the A.M.A., *Guides* and only after maximum medical improvement is determined. Impairment should not be considered permanent until a reasonable time has passed for the healing or recovery to occur. This will depend on the nature of underlying pathology, as the optimal duration for recovery may vary considerably from days to months. The clinical findings must indicate that the medical condition is static and well stabilized for the person to have reached maximum medical improvement.⁶

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the injury. The question of when such date has been reached is a factual one that depends upon the medical findings in the record. The determination of such date is to be made in each case upon the basis of the medical evidence in that case.⁷ The date of maximum medical improvement is usually considered to be the date of the medical examination that determined the extent of the impairment.⁸

³ OWCP's hearing representative noted that appellant had returned to full duty with the employing establishment on April 6, 2013.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

⁶ A.M.A., *Guides* 24 (6th ed. 2009); see *Orlando Vivens*, 42 ECAB 303 (1991) (a schedule award is not payable until maximum medical improvement -- meaning that the physical condition of the injured member of the body has stabilized and will not improve further -- has been reached).

⁷ *Marie J. Born*, 27 ECAB 623 (1976).

⁸ *E.g., Richard Larry Enders*, 48 ECAB 184 n.12 (1996) (date of the audiologic examination).

If the claimant sustains increased impairment at a later date which is due to work-related factors, an additional award will be payable if supported by the medical evidence. In such a case, the original award is undisturbed and the new award has its own date of maximum medical improvement, percent and period of compensability.⁹

ANALYSIS

Appellant does not dispute the impairment rating she received. She contests the date the schedule award began.

On appeal, counsel reiterated that there was no reason to disturb the original date of maximum medical improvement as, November 12, 2009, which was based on Dr. Becan's report. He contends that the November 9, 2012 eight percent schedule award should have commenced on April 23, 2010, the date payments under the first award ended and the period ran until sometime in October 2010. Counsel also contends that the November 12, 2013 decision of the hearing representative be set aside and remanded for a new determination as to maximum medical improvement or a finding of a conflict in medical opinion on this issue.

As noted, the date of maximum medical improvement is usually considered to be the date of the medical examination that determined the extent of the impairment.¹⁰ That date was February 21, 2012, the date that Dr. Gennace, the impartial medical examiner, issued his report finding that appellant had a 16 percent left leg impairment, an increase of 8 percent over the 8 percent initially awarded, based on his examination findings and impairment calculations. Dr. Gennace stated that she reached maximum benefit from treatment as of her last medical visit in 2009 with her treating physician, at which point any further treatment was palliative. The Board notes that he also advised that appellant had achieved an incomplete recovery with contusion and subluxation of the left knee. On April 8, 2013 Dr. Merola, advised that he determined that the date of Dr. Gennace's examination, February 21, 2012, to be the date of maximum medical improvement because that was the date upon which the physical examination findings were obtained and the most recent rating of impairment was provided. The Board notes that OWCP's procedures provide that an additional schedule award has its own date of maximum medical improvement. For these reasons, the Board finds that OWCP properly found February 21, 2012 as the date of maximum medical improvement in this case. The Board affirms the November 12, 2013 decision of OWCP's hearing representative.

CONCLUSION

The Board finds that OWCP properly determined February 21, 2012 as the date of maximum medical improvement.

⁹ Federal (FECA) Procedure Manual *see supra* note 5, Chapter 2.808.7.b(2) (January 2010).

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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