



impairment.<sup>2</sup> The Board noted that the claim had been accepted for a right knee sprain and a medial meniscus tear incurred while in the performance of duty on June 4, 2002. The medical evidence established that appellant had a nine percent right leg impairment based on reduced cartilage interval in the right knee and a partial medial meniscectomy.

In a decision dated September 22, 2014, the Board reviewed an April 9, 2014 OWCP overpayment decision.<sup>3</sup> OWCP had found that an overpayment of \$3,456.72 had been created when appellant was paid two compensation payments after his return to work on July 26, 2013. The Board affirmed a \$3,456.72 overpayment, but found appellant was not at fault in accepting the initial direct deposit compensation payment after his return to work. In addition, the Board found that OWCP could recover an overpayment from a schedule award.

Appellant sought an additional permanent impairment, and submitted an October 11, 2013 report from Dr. Michael Platto, a Board-certified physiatrist. Dr. Platto provided a history and results on examination. Measuring the range of motion under the diagnosis-based evaluation method for the right knee for flexion after three trials he found 102, 105, and 106 degrees. For extension (flexion contracture), the results were 18, 16, and 15 degrees. Dr. Platto identified Table 16-3, the knee regional grid, and opined that appellant had a class 4 impairment for total knee replacement, poor result with moderate loss of range of motion. He determined that appellant had a 59 percent right leg permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a report dated March 22, 2014, an OWCP medical adviser found that using Table 16-3 appellant had a 31 percent right leg impairment. He found that appellant's impairment was a class 3, for total right knee arthroplasty with mild loss of range of motion.

By decision dated April 1, 2014, OWCP issued a schedule award for an additional 22 percent permanent impairment to the right leg. The period of the award was 63.36 weeks from August 25, 2013.<sup>4</sup>

On December 26, 2014 appellant requested an additional schedule award and submitted a December 15, 2014 report from Dr. Platto.<sup>5</sup> He provided a history and results of the December 15, 2014 examination. Dr. Platto reported right knee flexion of 115 degrees and flexion contracture of 12 degrees. He noted that the flexion contracture was a moderate loss of range of motion. Dr. Platto noted this was actually an improvement from the October 11, 2013 examination, but remained a moderate loss of range of motion. He opined that under Table 16-3 appellant had a 59 percent right leg impairment.

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<sup>2</sup> Docket No. 07-82 (issued May 4, 2007).

<sup>3</sup> Docket No. 14-1133 (issued September 22, 2014).

<sup>4</sup> An appeal was filed with the Board April 9, 2014. The Board reviewed the April 1, 2014 decision but, by decision dated July 2, 2015, remanded the case because a conflict of medical opinion existed between Dr. Platto and the medical adviser. Docket No. 14-1077 (issued July 2, 2015).

<sup>5</sup> Appellant used the term "reconsideration" but the submission of new medical evidence suggested a request for an increased schedule award.

By decision dated March 26, 2015, OWCP denied modification of the April 1, 2014 decision. It stated that the issue was “not whether the claimant’s condition has changed, but whether there is evidence to show that the decision of [April 1, 2014] was in error.” OWCP found the prior report from the medical adviser was the weight of the evidence.

### **LEGAL PRECEDENT**

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>6</sup> Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>7</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.<sup>8</sup>

To the extent that a claimant asserts that a schedule award decision was erroneous based on his or her medical condition at that time, this would properly be considered a request for reconsideration.<sup>9</sup> A claimant may, however, seek an increased schedule award if the evidence establishes that he sustained increased impairment at a later date causally related to the accepted employment injury. Even if the term reconsideration is used, when a claimant is not attempting to show error in the prior schedule award decision and submits medical evidence regarding a permanent impairment at a date subsequent to the prior schedule award decision, it should be considered a claim for an increased schedule award.<sup>10</sup> A proper claim for an increase in permanent impairment is not subject to time limitations or to the clear evidence of error standard.<sup>11</sup>

### **ANALYSIS**

While the April 1, 2014 OWCP decision was on appeal to the Board, appellant submitted a new medical report from Dr. Platto dated December 15, 2014 requesting an additional impairment. Dr. Platto provided an opinion as to a permanent impairment to the right leg, based on appellant’s current examination. As noted above, even if the term reconsideration is used, the new medical evidence requires that OWCP considered a claim for an increased schedule award.<sup>12</sup>

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<sup>6</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>7</sup> *A. George Lampo*, 45 ECAB 441 (1994).

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

<sup>9</sup> *See J.K.*, Docket No. 14-1082 (issued November 24, 2014).

<sup>10</sup> *B.K.*, 59 ECAB 228 (2007).

<sup>11</sup> *R.P.*, Docket No. 10-1123 (issued January 25, 2011).

<sup>12</sup> *See also D.P.*, Docket No. 15-173 (issued March 9, 2015).

In the March 26, 2015 decision, OWCP incorrectly stated that the only issue was whether there was error in the April 1, 2014 OWCP decision. As that decision was on appeal to the Board, OWCP lacked jurisdiction over that decision.<sup>13</sup>

The case will be remanded to OWCP for proper consideration of the claim as a request for an increased schedule award. After appropriate further development, OWCP should issue a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant requested an increased schedule award and the case is remanded for proper development under the proper standard of review.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 26, 2015 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 14, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>13</sup> See 20 C.F.R. § 10.626. The Board notes that upon review of the April 1, 2014 schedule award, the Board on July 2, 2015 remanded the case for resolution of a conflict in medical opinion.