

patrol agent on December 20, 2010, when he was attempting to jump a fence. OWCP accepted the claim for lumbar and lumbosacral joint sprains, and displacement of lumbar intervertebral disc without myelopathy.

With respect to a permanent impairment, appellant had received a schedule award for nine percent left leg impairment in a prior 2002 claim.² He had undergone left knee arthroscopic surgery on February 20, 2002 to repair a lateral meniscus tear. An OWCP medical adviser opined in a December 18, 2002 report that under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had nine percent left leg impairment due to the left knee surgery and residual mild-to-moderate patella chondromalacia.

Under the current claim, an OWCP medical adviser, Dr. Leonard Simpson, an orthopedic surgeon, opined in a July 13, 2012 report that appellant had four percent impairment of the left lower extremity under the sixth edition of the A.M.A., *Guides*. He indicated that the impairment was based on S1 nerve root motor and sensory deficits affecting the left leg.

OWCP issued a schedule award decision dated September 24, 2012 for an additional four percent permanent impairment to the left leg, totaling 13 percent permanent impairment of the left lower extremity. The period of the award was 11.52 weeks from December 6, 2011.

As the Board noted in its prior decision, appellant submitted a March 26, 2013 report from Dr. Thomas Harris, an orthopedic surgeon, who opined that appellant had 10 percent left leg impairment based on spinal nerve sensory and motor deficits. Dr. Harris indicated that he applied *The Guides Newsletter* (July/August 2009) with respect to nerve impairments affecting the extremities.

On July 22, 2013 OWCP received a request for reconsideration dated July 17, 2013. Appellant noted that he had submitted a March 26, 2013 report from Dr. Harris. OWCP issued a December 6, 2013 decision denying an additional schedule award, finding that appellant had previously received schedule awards for 13 percent permanent impairment to the left leg, and the current impairment was only 10 percent.

By decision dated October 7, 2014, the Board set aside the December 6, 2013 OWCP decision.³ The Board noted that Dr. Harris had found 10 percent left leg impairment due to spinal nerve root deficits, but OWCP had found the percentage alone was insufficient as appellant had previously received schedule awards for 13 percent left leg permanent impairment. As the Board indicated, nine percent of the prior award had been based on a left knee strain. If the prior 9 percent was combined with the current 10 percent for spinal nerve deficits as reported by Dr. Harris, this would result in 18 percent left leg impairment under the A.M.A., *Guides*.⁴

² Appellant filed a claim alleging that he twisted his left knee in the performance of duty on January 15, 2002. OWCP accepted the claim for a left knee sprain/strain of the cruciate ligament. By decision dated February 11, 2003, it issued a schedule award for nine percent permanent impairment of the left leg.

³ Docket No. 14-1308 (issued October 7, 2014).

⁴ Under the A.M.A., *Guides*, Combined Values Chart, combining 10 and 9 results in 18 percent impairment. A.M.A., *Guides* 604.

The case was remanded for referral to an OWCP medical adviser for a proper opinion as to the percentage of the left leg impairment under the A.M.A., *Guides*.

In a report dated April 26, 2015, Dr. Simpson, an OWCP medical adviser, concurred that appellant had 10 percent left leg impairment under *The Guides Newsletter*. He found that appellant had five percent impairment for mild L5 motor deficit, three percent for moderate L5 sensory deficit, and two percent for moderate S1 sensory deficit. Dr. Simpson combined the 10 percent with the prior 9 percent for the left knee impairment under the Combined Values Chart of the A.M.A., *Guides* and opined that appellant had 18 percent left leg impairment. He found the date of maximum medical improvement was March 26, 2013, the date of the report from Dr. Harris.

By decision dated May 14, 2015, OWCP issued a schedule award for an additional 5 percent to the left leg, totaling 18 percent permanent impairment of the left lower extremity. The period of the award was 14.40 weeks from March 26, 2013.

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.⁵ 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.⁶ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁷

For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The Guides Newsletter* “Rating Spinal Nerve Extremity Impairment Using the Sixth Edition” (July/August 2009) is to be applied.⁸ It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.⁹

⁵ 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).

⁶ A. George Lampo, 45 ECAB 441 (1994).

⁷ FECA Bulletin No. 09-03 (March 15, 2009).

⁸ See *G.N.*, Docket No. 10-850 (issued November 12, 2010); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

⁹ *T.S.*, Docket No. 09-1308 (issued December 22, 2009); 20 C.F.R. § 10.404(d).

ANALYSIS

In the present case, the Board had remanded the case to OWCP for a proper referral to an OWCP medical adviser. Appellant previously received a schedule award for nine percent permanent impairment to his left leg under a separate claim, based on his 2002 left knee surgery and residual symptoms. An additional schedule award of four percent was issued on September 24, 2012, based on spinal nerve deficits affecting the left leg. As the Board noted in its prior decision, if appellant had an increased impairment based on spinal nerve deficits, this would be combined with the nine percent leg impairment based on the left knee.¹⁰

The impairment to an extremity due to a spinal nerve deficit is determined under *The Guides Newsletter*, as noted above. In this case both the attending physician, Dr. Harris, and the OWCP medical adviser, Dr. Simpson, concurred as to the application of *The Guides Newsletter* in this case. For an L5 mild motor deficit affecting the lower extremity, the default impairment is five percent.¹¹ The default leg impairment for L5 moderate sensory deficit is three percent, and for S1 moderate sensory deficit two percent. Neither Dr. Harris nor Dr. Simpson found an adjustment from the default impairments was warranted.¹²

An OWCP medical adviser then combined the 10 percent for spinal nerve deficits and the prior 9 percent impairment based on the left knee injury, using the Combined Values Chart in the A.M.A., *Guides*, for 18 percent left leg impairment.¹³ There is no contrary medical evidence and this represents the weight of the probative evidence in this case. Since appellant had previously received schedule awards to the left leg of 13 percent, OWCP issued an additional 5 percent.

On appeal, appellant disagrees with the May 14, 2015 decision. He stated that his left leg has numbness, weakness, and persistent muscle cramps. Appellant states that the injury is worse “than the 9 [percent] extra you want to award and I need to be compensated for the entire 18 [percent] sensory impairment with nothing subtracted.” The medical evidence in this case does establish that appellant’s current left leg impairment was 18 percent. This was based on 10 percent for sensory and motor deficits, combined with the prior 9 percent for the left knee. Because appellant had received prior schedule awards to the left leg for 13 percent, he was entitled to an additional 5 percent. The prior schedule awards were based on both sensory and motor deficits to the leg, as well as impairment to the left knee. As noted above, when the prior impairment is to the same member and duplicates the current impairment, the current schedule award is reduced by prior compensation paid.

¹⁰ See *id.*

¹¹ See *The Guides Newsletter*, Proposed Table 2.

¹² The default impairment may be adjusted using the formula described in the A.M.A., *Guides* 521, based on functional history (Table 16-6), physical examination (Table 16-7), and clinical studies (Table 16-8),

¹³ A.M.A., *Guides* 604. The method of combining impairments is based on the idea that a second impairment should apply not to the whole but only to the part that remains after the first impairment has been applied. A.M.A., *Guides* 22-23.

Appellant can at any time submit new medical evidence showing a progression of an employment-related permanent impairment and request an additional schedule award.

CONCLUSION

The Board finds the evidence does not establish more than 18 percent permanent impairment to the left leg.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2015 is affirmed.¹⁴

Issued: December 15, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁴ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.