

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

L.C., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PROTECTION,)
Chula Vista, CA, Employer)

**Docket No. 15-0512
Issued: July 13, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 5, 2015 appellant filed a timely appeal from a December 5, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 schedule award determination.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a 23 percent permanent impairment of his right lower extremity, for which he received schedule awards.

FACTUAL HISTORY

On December 31, 2010 appellant, then a 51-year-old supervisory border patrol agent, filed a traumatic injury claim, alleging that on December 30, 2010 he slipped on black ice in a

¹ 5 U.S.C. § 8101 *et seq.*

parking lot and his right knee buckled in the performance of duty. He did not stop work. OWCP accepted the claim for tear of the medial meniscus of the right knee and localized primary arthritis of the right ankle and foot. On September 28, 2011 appellant underwent an authorized right knee partial medial and lateral meniscectomy. He received appropriate compensation benefits.

On September 20, 2012 OWCP granted appellant a schedule award for 13 percent permanent impairment of the right lower extremity. The award covered a period of 37.44 weeks from February 17 to October 26, 2012.

Appellant underwent an authorized right medial compartment uniarthroplasty, partial knee replacement on March 25, 2013.

On December 6, 2013 appellant claimed an increased schedule award. In an accompanying November 11, 2013 report, Dr. Harbinder S. Chadha, a Board-certified orthopedic surgeon, examined appellant and diagnosed advanced arthritis of the right knee and status post knee replacement. He referred to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008) (A.M.A., *Guides*) and referred to Table 16-13² for his knee replacement and determined that appellant qualified for a class 2 diagnosis criteria with a “mid rating of a 25.” Dr. Chadha found a net adjustment total of -6 and determined that yielded 19 percent impairment. He explained that the lowest value for a class 2 rating for a good result was 21 percent right lower extremity impairment, which translated into 8 percent whole person impairment.

In a report dated January 22, 2014, an OWCP medical adviser noted appellant’s history of injury and treatment, and Dr. Chadha’s report. He utilized the A.M.A., *Guides* and determined that appellant reached maximum medical improvement on November 11, 2013, the date of Dr. Chadha’s evaluation. The medical adviser concurred with the rating of 21 percent impairment. He explained that 21 percent was eight percent higher than the previously assessed 13 percent award.

Accordingly, on March 24, 2014 OWCP found that appellant had 21 percent impairment of the right leg, for which it previously awarded a 13 percent schedule award. It therefore granted appellant an additional eight percent permanent impairment of the right leg. The award covered a period of 23.04 weeks from November 11, 2013 to April 21, 2014.

In an April 7, 2014 report, Dr. Robert M. Maywood, a Board-certified orthopedic surgeon, noted appellant’s history of injury and treatment, which included knee arthroscopy and arthroplasty. He examined appellant and provided findings which included slight diffuse tenderness to palpation over the joint line with no patellofemoral crepitus with range of motion. Dr. Maywood also found two centimeters of quadriceps atrophy. He utilized the A.M.A., *Guides* and explained that for a partial or total knee replacement, there was a default class 2, 25 percent grade C impairment based on page 511, Table 16-3. Dr. Maywood noted that, for functional history, appellant had a moderate problem, due to some continued tenderness and range of motion loss. He determined that clinical studies revealed a moderate problem due to significant arthritis, the implant which was placed, and continued atrophy. Dr. Maywood opined that there

² A.M.A., *Guides* 511.

was no change in the net adjustment formula and that appellant had 25 percent right leg impairment.

On May 27, 2014 appellant requested reconsideration.

In a June 17, 2014 report, an OWCP medical adviser noted that Dr. Maywood recommended a grade modifier 2 for functional history adjustment and advised that appellant had a “moderate problem.” He explained that the report documented continued discomfort; however, there was no documentation of any higher than grade 1 for functional history adjustment, despite the statement of “moderate problems.” The medical adviser explained that he would recommend a grade modifier 1 or a -1 net adjustment for functional history adjustment. Regarding a physical examination adjustment, he indicated that Dr. Maywood noted slight diffuse tenderness to palpation over the joint line and two centimeters of quadriceps atrophy. The medical adviser determined that appellant would qualify for a grade modifier 2 or a 0 net adjustment. He noted that clinical studies adjustment was utilized for class placement and was nonapplicable. The medical adviser opined that the total net adjustment would be -1 and this would move the impairment into a class 2, Category B or a 23 percent lower extremity impairment. He noted that he disagreed with Dr. Maywood over the functional history grade modifier and opined that he would assess 23 percent impairment instead of 25 percent impairment. The medical adviser explained that the date of maximum medical improvement remained the same, November 11, 2013, which was eight months following the March 25, 2013 uniarthroplasty. He explained that the increased award of two percentage points was due to the documented two centimeters of quadriceps atrophy, qualifying for a grade modifier 2 for physical examination.

In a July 15, 2014 decision, OWCP found that appellant had an additional two percent impairment of the right leg for a total of 23 percent permanent impairment. The award covered a period of 5.76 weeks from April 22 to June 1, 2014.

On September 5 and October 28, 2014 appellant requested reconsideration. He submitted an August 25, 2014 report from Dr. Thomas Harris, an orthopedic surgeon, who noted appellant’s history, which included a right knee arthroscopy with medial and lateral meniscectomy and a right knee unicompartmental arthroplasty. Dr. Harris determined that x-rays of the right knee revealed a partial knee replacement with hardware in good position. He provided findings which included: intermittent aching right knee pain in the category of 2 out of 10, with 10 being incapacitated. Dr. Harris noted that appellant rated his pain with activity as three which increased with walking, standing, kneeling, squatting and stairs and decreased with sifting, rest, and ice. Appellant also complained of weakness. Right knee examination showed 1+ knee effusion without erythema; mild tenderness to palpation along the patellofemoral joint line and medial joint line; and no tenderness along the lateral joint line and no crepitus with range of motion. Dr. Harris utilized the A.M.A., *Guides* and referred to page 511, Table 16-3, Osteotomy. He opined that appellant had 25 percent right lower extremity impairment as a result of his unicompartmental or partial total knee arthroplasty.

In a November 26, 2014 report, an OWCP medical adviser noted appellant’s history of injury and treatment and reviewed Dr. Harris’ August 25, 2014 report. He noted findings reported by Dr. Harris and the physician’s recommendation for a class 2 -- 25 percent impairment rating. The medical adviser explained that Dr. Harris’ report did not document the

various adjustment grid ratings. He referred to Table 16-3, Knee Regional Grid-Lower Extremity Impairment, and explained that there would be a 25 percent default rating for status post total knee replacement with a “good result” (good position, stable, functional). The medical adviser advised that noting functional history adjustment there would be a grade modifier 1 or a -1 net adjustment. He explained that, for the physical examination adjustment, appellant qualified for a grade modifier 1 or a -1 net adjustment. The medical adviser explained that the clinical studies adjustment was nonapplicable as it was utilized for class placement. He determined that the total net adjustment would be -2 and this would move the impairment into a class 2, Category A or a 21 percent leg impairment. The medical adviser explained that this was lower than the previously assessed 23 percent.

By decision dated December 5, 2014, OWCP denied modification of the prior decision. It found that the evidence was not sufficient to modify the prior decision.

LEGAL PRECEDENT

The schedule award provision of FECA,³ and its implementing federal regulations,⁴ 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.⁵ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶ For decisions issued after May 1, 2009, the sixth edition will be used.⁷

In addressing lower extremity impairments, the sixth edition requires identifying the impairment Class of Diagnosis condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁸ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP’s medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP’s medical adviser providing rationale for the percentage of impairment specified.¹⁰

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

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

⁸ A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

⁹ *Id.* at 521.

¹⁰ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

ANALYSIS

OWCP accepted appellant's traumatic injury claim for tear of the medial meniscus of the right knee. Appellant underwent two authorized surgeries, the most recent of which was a right medial compartment uniarthroplasty, partial knee replacement on March 25, 2013. OWCP granted appellant right leg schedule awards for a total of 23 percent permanent impairment. Appellant requested reconsideration.

Appellant provided an August 25, 2014 report from Dr. Harris who determined that appellant had 25 percent impairment of the right leg and referred to Table 16-3 of the A.M.A., *Guides* and the section for osteotomy and knee replacement.¹¹ He opined that appellant's impairment was a result of his unicompartmental or partial total knee arthroplasty. However, the Board notes that he did not address grade modifiers or application of the net adjustment formula in determining the 25 percent impairment rating. As Dr. Harris did not adequately explain how he used the A.M.A., *Guides* to rate appellant's right leg impairment, his opinion is of diminished probative value.¹²

In a November 26, 2014 report, an OWCP medical adviser noted appellant's history and reviewed Dr. Harris' August 25, 2014 report. He noted Dr. Harris' findings and indicated that the report did not document the grade modifiers used to make adjustments within the regional knee grid. The medical adviser used Dr. Harris' findings and, under the Knee Regional Grid, Table 16-3, identified a class 2, 25 percent default value for a status post total knee replacement with a "good result" (good position, stable, functional). For functional history and physical examination adjustments, he assigned a grade modifier 1. The medical adviser explained that clinical studies adjustment was not as it was utilized for class placement.¹³ Applying the net adjustment formula resulted in an adjustment of -2, which resulted in a grade adjustment from C to A.¹⁴ The corresponding upper extremity impairment for a class 2, grade A is 21 percent.¹⁵ The Board finds that OWCP medical adviser properly applied the A.M.A., *Guides* to rate impairment to appellant's right leg impairment based on the findings in Dr. Harris' report. Appellant has not submitted any current medical evidence in conformance with the A.M.A., *Guides* to support a greater impairment.

On appeal appellant argues that he should have received a 25 percent impairment based upon his physician's findings. However, as noted above, Dr. Harris' report did not comport with the A.M.A., *Guides*. Appellant may request a schedule award or increased schedule award based

¹¹ A.M.A., *Guides* 511.

¹² See *J.G.*, Docket No. 09-1128 (issued December 7, 2009) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

¹³ See A.M.A., *Guides* 515-16 (if a grade modifier, or nonkey factor, was used for primary placement in the regional grid, it may not be used again in the impairment calculation).

¹⁴ Net Adjustment = (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). Section 15.3d, A.M.A., *Guides* 521. Here, the CDX is 2 and clinical studies are not applicable. Thus, application of the formula results in: (1 - 2) + (1 - 2) = -2.

¹⁵ *Supra* note 11.

on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than 23 percent permanent impairment of his right lower extremity, for which he received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2015
Washington, DC

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

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

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