

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

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**G.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Weirton, WV, Employer**

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**Docket No. 14-2041  
Issued: June 26, 2015**

*Appearances:*  
Kevin L. Card, for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 23, 2014 appellant, through her representative, filed a timely appeal from a May 1, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than 25 percent permanent impairment to his right lower extremity, for which he has received a schedule award.

**FACTUAL HISTORY**

Appellant, a 54-year-old letter carrier, injured his right knee on April 16, 2011 when his knee buckled while he was carrying a 25-pound tray of mail into a truck. He filed a claim for benefits which OWCP accepted for aggravation of preexisting right knee osteoarthritis.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

On August 31, 2011 appellant underwent surgery for total right knee replacement. The procedure was performed by Dr. Dana C. Mears, Board-certified in orthopedic surgery. OWCP authorized the surgery.

In a February 14, 2012 report, Dr. Mears stated that appellant was doing well six months after his total right knee joint replacement procedure. He advised that appellant had returned to work as a mail carrier and was experiencing minimal discomfort in his knee. Appellant had normal toe/heel reciprocal gait, no deformity, no soft tissue swelling, stable flexion of 0 to 100 degrees in the knee, and satisfactory patellar tracking.

On October 16, 2013 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right lower extremity.

In an April 16, 2013 report, Dr. Michael J. Platto, a specialist in physical medicine and rehabilitation, found that appellant had 59 percent right lower extremity impairment stemming from his accepted right knee sprain, right knee osteoarthritis, and right knee replacement conditions pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*).<sup>2</sup> He stated that on examination appellant had a range of motion in the right knee of 117 degrees of flexion. Dr. Platto found, however, that appellant lacked 23 degrees to full extension. He further found that appellant had moderate instability, moderate positive Lachman's sign of the right knee, with mild tenderness to palpation over the superior, and medial aspects of the right knee and moderate crepitus.

Dr. Platto advised that appellant had undergone a right total knee arthroplasty due to his accepted osteoarthritis condition. He used a diagnosis-based impairment method, finding that under Table 16-3, pages 509 and 511, Knee Regional Grid, Lower Extremity Impairments, appellant's right knee replacement yielded a class 4 rating for moderate-to-severe instability and/or severe motion deficit, based on a positive Lachman's sign.<sup>3</sup> Dr. Platto also stated that appellant's lacking 23 degrees of extension in his right knee qualified him for a severe motion impairment based on Table 16-23, page 549. He stated that the default rating for this motion impairment was 67 percent (page 511). Dr. Platto advised that appellant underwent an American Academy of Orthopedic Surgeons (AAOS) hip and knee, lower extremity impairment questionnaire for the lower limb, on which appellant had a core scale, standardized mean score of 48 and a normative score of 19, which yielded a moderate deficit pursuant to the Adjustment Grid, Functional History, at Table 16-6, page 516 of the A.M.A., *Guides*.<sup>4</sup> He stated that appellant was not entitled to a grade modifier for physical examination, as range of motion and instability were used to fix the clinical class, nor was he entitled to a grade modifier for clinical studies, as the August 31, 2011 operative report was used to fix the clinical class.

Using the net adjustment formula at page 521,<sup>5</sup> Dr. Platto subtracted the grade of 4 from the functional history grade modifier 2 for a net adjustment of minus 2. Using Table 16-3, page

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> A.M.A., *Guides* 509, 511.

<sup>4</sup> *Id.* at 516.

<sup>5</sup> *Id.* at 521.

511, he found that this moved the initial default impairment of 67 percent two slots over, which produced an adjusted impairment of 59 percent for the right lower extremity.

In a December 19, 2013 report, Dr. Arnold T. Berman, Board-certified in orthopedic surgery and an OWCP medical adviser, reviewed Dr. Platto's April 16, 2013 report and found that appellant had 25 percent right lower extremity impairment in conformance with the sixth edition of the A.M.A., *Guides*. He noted that Dr. Mears found that appellant had achieved an excellent result and recommended a return to full duty as a mailman, noting that he had minimal discomfort in the right knee and range of motion from 0 to 100 degrees with no deformity. Dr. Berman stated that these examination findings by appellant's surgeon were totally contradictory to Dr. Platto's findings with regard to the quality of the result and range of motion in the right knee. He noted that Dr. Platto is not an orthopedic surgeon and that Dr. Mears is a well-known knee replacement surgeon, and that therefore his opinion that appellant had achieved a good surgical result represented the weight of medical evidence with regard to appellant's physical examination findings. Dr. Berman opined that Dr. Platto's examination findings could not be accepted and that his 59 percent impairment rating was incorrect. Accordingly, he found that, under Table 16-3, page 511, appellant had a good result for knee replacement, a class 2 impairment; good result and position, stable and functional, with a default value of grade C. This yielded 25 percent right lower extremity impairment based on a range under class 2 between 21 and 25 percent, and a net adjustment of zero. Dr. Berman further found that the date of maximum medical improvement was the date of Dr. Mears' last examination, February 14, 2012, "the point at which a condition is stabilized and is unlikely to change, improve or worsen substantially in the next year with or without treatment. While symptoms and signs of the condition may wax and wane over time, further overall recovery or deterioration is not anticipated."

By decision dated May 1, 2014, OWCP granted appellant a schedule award for an additional three percent permanent impairment of the right lower extremity for the period February 14 to April 14, 2012, for a total of 8.64 weeks of compensation. It noted that he had previously been awarded 22 percent impairment for the right lower extremity under case numbers xxxxxx686 and xxxxxx946.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>6</sup> and its implementing regulations<sup>7</sup> 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>8</sup> The claimant has the burden of proving

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<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>8</sup> *Id.*

that the condition for which a schedule award is sought is causally related to his or her employment.<sup>9</sup>

### ANALYSIS

In the instant case, OWCP accepted the conditions of right knee sprain and right knee osteoarthritis and authorized surgery for right knee replacement. Appellant's treating physician, Dr. Platto, rated 59 percent right lower extremity impairment pursuant to the sixth edition of the A.M.A., *Guides* based on a class 4 postoperative rating for moderate-to-severe instability and/or severe motion deficit under Table 16-3, page 511. This contrasted with the opinion of Dr. Berman, OWCP's medical adviser, who found that appellant had 25 percent impairment based on a good result for knee replacement, a class 2 impairment pursuant to Table 16-3, page 511.

The Board notes that the A.M.A., *Guides* indicate that the diagnosis-based impairment method is the preferred rating method for the lower extremities.<sup>10</sup> Range of motion impairment method is primarily used as a physical adjustment factor and is only used to determine actual impairment values when it is not possible to otherwise define impairment.<sup>11</sup> The A.M.A., *Guides* further state that, while range of motion will be used in some cases as an alternative approach to rating impairment, it is not to be combined with the diagnosis-based impairment and stands alone as an impairment rating.<sup>12</sup> The A.M.A., *Guides* directs examiners to rate diagnosis-based impairments for the lower extremities pursuant to Chapter 16, which indicates at page 497, section 16.2a that impairments are defined by class and grade. Where a claim has two significant diagnoses, the examiner is instructed by the A.M.A., *Guides* to use the diagnosis with the highest causally-related impairment rating for the impairment calculation. Pursuant to the above criteria, OWCP's medical adviser properly relied on the diagnosis-based method for rating appellant's right knee impairment based on a good result for knee replacement, a class 2 impairment; good result and position, stable, and functional pursuant to Table 16-3, page 511.<sup>13</sup>

In accordance with Chapter 16, the examiner is instructed to utilize the net adjustment formula outlined at pages section 16.3, pages 509-11 of the A.M.A., *Guides*,<sup>14</sup> to obtain the proper impairment rating.

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<sup>9</sup> *Veronica Williams*, 56 ECAB 367, 370 (2005).

<sup>10</sup> A.M.A., *Guides* 497.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 500.

<sup>13</sup> The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. See *Peter C. Belkind*, 56 ECAB 580, 585 (2005).

<sup>14</sup> A.M.A., *Guides* 521-22.

Appellant's treating orthopedic surgeon, Dr. Mears, reported on February 14, 2012 that appellant could return to work as a mail carrier following his total knee replacement. He related that appellant had minimal discomfort in his right knee, with essentially normal examination findings and stable flexion from 1 to 100 degrees. Based upon Dr. Mears' report, Dr. Berman utilized Table 16-3, page 511 of the A.M.A., *Guides*, the Knee Regional Grid, and found that appellant had a class 2 impairment for knee replacement, a class 2 impairment; good result and position, stable and functional, with a default value of grade C. This produced 25 percent right lower extremity impairment based on a range under class 2 between 21 and 25 percent, and a net adjustment of zero. Based on the report from its medical adviser, OWCP determined that appellant had 25 percent impairment of the right lower extremity, as he calculated this rating based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. The medical adviser explained that Dr. Mears' physical examination findings should be accepted because he was a renowned orthopedic surgeon and had performed appellant's knee replacement surgery. He noted that Dr. Platto had offered no explanation as to why his physical examination findings of the right knee were so different from Dr. Mears' normal findings, after appellant had had undergone the total knee replacement surgery.

The Board finds that the December 19, 2013 impairment rating from OWCP's medical adviser, the only impairment rating rendered in conformance with the applicable protocols and tables of the A.M.A., *Guides*, represented the weight of the medical evidence in this case. Accordingly, as the record contains no other probative, rationalized medical opinion which indicates that appellant has greater impairment based on his accepted right knee conditions, OWCP properly granted him a schedule award for 25 percent right upper extremity impairment in its May 1, 2014 decision.

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**

The Board finds that appellant is not entitled to more than 25 percent award for the right lower extremity, for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 1, 2014 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 26, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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