

FACTUAL HISTORY

On December 3, 1998 appellant, then a 51-year-old mail handler, filed an occupational disease claim alleging that on November 21, 1998 he first became aware of his knee injury and realized that his injury was caused or aggravated by his federal employment.² By letter dated February 10, 1999, OWCP accepted his claim for left knee meniscus tear and repair.³

In a decision dated April 12, 2011, OWCP granted appellant a schedule award for three percent impairment of the left leg.

On June 16, 2014 appellant filed a claim for an additional schedule award and submitted medical evidence. In a March 12, 1999 Form CA-20, Dr. Joseph C. Cheng, an attending Board-certified orthopedic surgeon, described a history of injury that appellant engaged in repetitive use and experienced wear and tear. He indicated with an affirmative mark that appellant sustained a meniscus tear that was caused or aggravated by an employment activity.

In a June 16, 2014 Form CA-20, Dr. Blackwell provided a history of injury that appellant noted the onset of left knee pain and swelling at work. He indicated with an affirmative mark that appellant sustained a left knee injury that was caused or aggravated by an employment activity. Dr. Blackwell explained that the injury was caused by pushing and pulling heavy mail.

By letter dated July 9, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit additional medical evidence, including an impairment opinion report from his attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant was afforded 30 days to submit the requested evidence.

On July 15, 2014 appellant submitted Dr. Blackwell's July 8, 2014 work status report. Dr. Blackwell diagnosed left knee sprain and advised that appellant was unable to return to work. He noted that appellant had retired.

In an August 11, 2014 decision, OWCP denied appellant's claim for an additional schedule award, finding that the medical evidence submitted was insufficient to establish that he had more than three percent impairment of the left leg.

² 20 C.F.R. § 501.2(c)(1); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). In a prior appeal, the Board affirmed a July 21, 2011 nonmerit OWCP decision which denied appellant's request for reconsideration of the denial of his occupational disease claim for bilateral hip conditions, under 5 U.S.C. § 8128; OWCP File No. xxxxxx610. Docket No. 12-49 (issued May 16, 2012).

³ The record does not indicate that appellant underwent the authorized left knee surgery.

LEGAL PRECEDENT

The schedule award provision of FECA,⁴ and its implementing federal regulations,⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁶ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ Effective May 1, 2009, FECA adopted the sixth edition of the A.M.A., *Guides*⁸ as the appropriate edition for all awards issued after that date.⁹

A claimant seeking compensation under FECA¹⁰ has the burden to establish the essential elements of his or her claim.¹¹ With respect to a schedule award, it is appellant's burden of proof to establish an increased schedule award.¹² A claimant may seek an increased schedule award if the evidence establishes that he or she sustained an increased impairment causally related to an employment injury.¹³ The medical evidence must include a detailed description of the permanent impairment.¹⁴

ANALYSIS

OWCP accepted that appellant sustained an employment-related meniscus tear of the left knee. By decision dated April 12, 2011, it awarded him a schedule award for three percent impairment to the left leg. Appellant requested an increased award. In an August 11, 2014 decision, OWCP found that he was not entitled to an additional schedule award for the left leg.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁷ 20 C.F.R. § 10.404; *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁸ A.M.A., *Guides* (6th ed. 2009).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *Edward W. Spohr*, 54 ECAB 806, 810 (2003).

¹³ *See Rose V. Ford*, 55 ECAB 449 (2004).

¹⁴ *See Vanessa Young*, 55 ECAB 575 (2004). OWCP procedures provide that the medical evidence must include a detailed report with an explanation as to how the impairment rating was calculated. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (January 2010).

The Board finds that appellant did not meet his burden of proof to establish that he sustained greater impairment.

In a March 12, 1999 Form CA-20, Dr. Cheng, an attending physician, indicated with a checkmark that appellant sustained a meniscus tear that was caused or aggravated by an employment activity. His report did not provide an opinion as to whether appellant sustained permanent impairment due to the accepted injury. As well, Dr. Cheng did not provide any impairment rating under the A.M.A., *Guides*. The Board finds, therefore, that his report is of limited probative value and insufficient to establish appellant's entitlement to an increased schedule award.

Similarly, Dr. Blackwell's June 16, 2014 Form CA-20 is insufficient to establish an increased schedule award. He noted by checking a box that appellant sustained a left knee injury that was caused or aggravated by pushing and pulling heavy mail at work, but he did not provide any opinion as to whether appellant sustained permanent impairment due to the accepted injury or an impairment rating based on the A.M.A., *Guides*. In a July 8, 2014 report, Dr. Blackwell diagnosed left knee sprain and found that appellant was disabled for work. He did not address permanent impairment pursuant to the A.M.A., *Guides*. For the stated reasons, the Board finds that Dr. Blackwell's reports are insufficient to establish appellant's burden of proof.

The Board finds that there is no probative medical evidence establishing that appellant has more than three percent impairment of his left leg causally related to the accepted employment injury. As such appellant is not entitled to an increased schedule award.

On appeal, appellant contended that Dr. Blackwell deliberately waited to complete CA-20 forms after the expiration of a 30-day limitation period to keep him from receiving a schedule award. He did not submit any evidence to substantiate his assertion. Moreover, the Board notes that it is appellant's burden of proof to establish an increased schedule award.¹⁵

The Board notes that appellant submitted new evidence after OWCP issued its August 11, 2014 decision and on appeal. The Board has no jurisdiction to review this evidence for the first time on appeal.

Appellant may request a 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 did not establish that he sustained greater than three percent impairment of his left leg for which he received a schedule award.

¹⁵ *Supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2015
Washington, DC

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

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

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