

FACTUAL HISTORY

On February 27, 2013 appellant, then a 56-year-old mail carrier, filed a traumatic injury claim alleging that on February 26, 2013 he twisted his left knee when he slipped on ice and snow in the performance of duty. OWCP accepted his claim for sprain of the cruciate ligament and tear of the medial meniscus in the left knee on March 29, 2013.

Dr. Timothy G. Kenney, a Board-certified orthopedic surgeon, examined appellant on March 14, 2013 and stated that he slipped on some snow at work and twisted his left knee on February 26, 2013. Appellant underwent a magnetic resonance imaging (MRI) scan which demonstrated significant tricompartmental degenerative arthritis and tearing of the posterior horn of the medial meniscus. The MRI scan also showed degenerative changes of the anterior cruciate ligament (ACL) with a possible tear and moderate joint effusion. Dr. Kenney recommended surgery.

On April 26, 2013 Dr. Kenney performed a left knee arthroscopy with partial medial meniscectomy. He noted grade two to three chondromalacia in the patellofemoral compartment, grade three to four changes on the medial, and femoral condyle with a small area of full thickness lost on the posteromedial aspect of the condyle. Dr. Kenney stated that appellant had scatter grade two to three changes on the tibia. He reported a horizontal cleavage tearing throughout the substance of the medial meniscus with displaceable component. Dr. Kenney stated that appellant's ACL was degenerative but not torn. He also found changes and irregularities on the anterior and posterior horn of the lateral meniscus without discrete tearing.

Following the surgery, Dr. Kenney examined appellant on June 20, 2013 and stated that he had returned to regular duty. He noted that appellant had some discomfort and swelling by the end of the day which worsened with certain movements and activities. On August 8, 2013 appellant informed Dr. Kenney that he was still experiencing swelling and discomfort as well as mechanical symptoms with overuse and twisting movements. After three joint injections, he continued to report moderate symptoms worsened by twisting movements. On September 27, 2013 OWCP accepted the additional condition of aggravation of left knee osteoarthritis.

Appellant requested a schedule award on March 17, 2014. In a report dated December 17, 2013, Dr. Kenney noted appellant's surgery and viscosupplemental injections. He stated that appellant continued to experience symptoms on a daily basis with were worsened with activities and weather changes. Appellant had improvement when wearing a hinged knee brace. Dr. Kenney reported that he had an antalgic gait, with mild swelling, trace effusion, and no atrophy. He found tenderness to palpation in the medial joint line of the patella with mild crepitation of the patella. Dr. Kenney stated that appellant had 130 degrees of passive flexion and 0 degrees of extension in the left knee. He stated that appellant had significant degenerative arthritis prior to his injury which was not previously highly symptomatic. Dr. Kenney opined that appellant's arthritis was the primary cause of his current symptoms and that he had reached maximum medical improvement from his work-related injuries.

OWCP requested additional medical evidence in support of his claim for a schedule award by letter dated March 19, 2014. Appellant responded on March 31, 2014 and stated that Dr. Kenney was unwilling to provide a further impairment rating.

OWCP referred appellant for a second opinion examination with Dr. Anadeep Kumar, a physician Board-certified in physical medicine and rehabilitation on June 10, 2014. Dr. Kumar examined appellant and found normal alignment and range of motion from 0 to 130 degrees. He found no tenderness in the medial joint line of the patella. Dr. Kumar applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² diagnosis-based estimate for partial medial meniscectomy found in Table 16-3 of the A.M.A., *Guides*. He found that appellant had a class 1 impairment with a default value of two percent. Dr. Kumar stated that appellant's Functional History (GMFH) grade modifier was zero, that his Physical Examination (GMPE) grade modifier was zero, and that the Clinical Studies (GMCS) grade modifier was not applicable. He concluded, after applying the formula of the A.M.A., *Guides*, that appellant had a grade A impairment rating of one percent of the left lower extremity.

An OWCP medical adviser reviewed this report on August 17, 2014 and agreed with Dr. Kumar's impairment rating stating, "This impairment rating is acceptable based on the [A.M.A., *Guides*]."

By decision dated August 29, 2014, OWCP granted appellant a schedule award for one percent impairment of his left leg.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁵

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, physical examination, and clinical studies. The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁶

² A.M.A., *Guides* (6th ed. 2008).

³ 5 U.S.C. §§ 8101-8193, 8107.

⁴ 20 C.F.R. § 10.404.

⁵ For new decisions issued after May 1, 2009, OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (February 2013); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁶ A.M.A., *Guides* 521. *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

ANALYSIS

Appellant claimed a schedule award for permanent impairment of the left lower extremity caused by a work-related left knee injury including partial medial meniscectomy and aggravation of underlying arthritis. He underwent an MRI scan which demonstrated significant tricompartmental degenerative arthritis and tearing of the posterior horn of the medial meniscus.

Dr. Kenney found that appellant had reached maximum medical improvement and stated that appellant continued to experience symptoms on a daily basis which were worsened with activities and weather changes. He found that appellant had an antalgic gait, mild swelling, trace effusion, and no atrophy in the left leg. Dr. Kenney found tenderness to palpation in the medial joint line of the patella with mild crepitation of the patella. He stated that appellant had 130 degrees of passive flexion and 0 degrees of extension in the left knee. Dr. Kenney stated that appellant had significant degenerative arthritis prior to his injury which was not previously highly symptomatic. He opined that appellant's arthritis was the primary cause of his current symptoms and that he had reached maximum medical improvement from his work-related injuries. Dr. Kenney did not provide an impairment rating and did not correlate his findings with the A.M.A., *Guides*. His report is therefore insufficient to establish appellant's permanent impairment for schedule award purposes.

Dr. Kumar, the second opinion physician, found normal alignment and range of motion from 0 to 130 degrees in appellant's left knee. He reported no tenderness in the medial joint line of the patella. Dr. Kumar applied Table 16-3 of the A.M.A., *Guides*⁷ and correctly noted that a partial medial meniscectomy was a class 1 impairment with a default rating of two. He stated that appellant's functional history grade modifier was zero as he did not find any gait derangement.⁸ Dr. Kumar further stated that appellant's physical examination grade modifier was zero due to the absence of palpatory findings, normal alignment, and no ratable loss of motion.⁹ He stated that the clinical studies grade modifier was not applicable. The record does not contain imaging studies used to grade arthritis¹⁰ which would be ratable under this grade modifier. Dr. Kumar applied the (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). A.M.A., *Guides* formula and found that (0-1) + (0-1) resulted in a grade A or one percent impairment of appellant's left lower extremity due to his knee conditions.

OWCP medical adviser reviewed this report on August 17, 2014 and agreed with Dr. Kumar's impairment rating stating, "This impairment rating is acceptable based on the [A.M.A., *Guides*]."

The Board finds that the weight of the medical evidence is represented by the reports of Dr. Kumar and OWCP medical adviser who reviewed the findings on examination and applied

⁷ *Id.* at 509, Table 16-3.

⁸ *Id.* at 516, Table 16-6.

⁹ *Id.* at 517, Table 16-7; 549, Table 16-23.

¹⁰ *Id.* at 518, 16.3c Adjustment Grid--Clinical Studies; 519, Table, 16-8.

the A.M.A., *Guides*. These physicians agreed that appellant had one percent impairment of his left lower extremity due to his partial medial meniscectomy.

On appeal appellant argued that his schedule award did not take into account the degree of his arthritis. As noted above, the record does not contain the necessary x-rays to demonstrate and grade arthritis. The A.M.A., *Guides* provide detailed standards for the type, view and distance of x-rays needed to evaluate knee arthritis. As Dr. Kumar did not report physical findings relative to arthritis, he did not feel it necessary to undertake these studies.

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 has no more than one percent impairment of his left leg for which he has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 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