

FACTUAL HISTORY

OWCP accepted that appellant, a 57-year-old tractor trailer operator, sustained a left knee strain and left knee contusion on May 24, 2008 due to slipping off a step while exiting a truck in the performance of duty. Appellant received appropriate disability compensation and medical benefits. He returned to light duty effective September 25, 2009.

In December 2009 appellant's treating physician, Dr. Randall Yee, a Board-certified orthopedic surgeon, requested authorization to perform a left total knee arthroplasty as appellant still had pain from his employment injury which required surgical intervention.

On January 20, 2010 OWCP referred appellant to Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether the surgery was causally related to his accepted conditions. In a February 22, 2010 report, Dr. Swartz found that appellant's complex medial meniscus tear was primarily a result of the May 24, 2008 employment injury. He asserted that there had also been further acceleration and permanent aggravation of the arthritic process in the left knee. Dr. Swartz concluded that appellant's employment-related conditions were still present and had not resolved. He determined, however, that appellant's need for a left total knee arthroplasty was not causally related to the May 24, 2008 employment injury as it was instead related to the natural progression of his osteoarthritis.

On September 27, 2010 OWCP found a conflict in the medical opinion evidence regarding appellant's request for surgery and referred appellant to Dr. Anthony Serfustini, a Board-certified orthopedic surgeon, to resolve the conflict. In a November 1, 2010 report, Dr. Serfustini conducted an impartial medical examination and found no objective evidence of permanent aggravation to his preexisting knee condition as there were no alternations of anatomical structures that would denote a permanent aggravation, no evidence of any fracture, subluxation, or dislocation to the knee, and x-ray findings of advanced osteoarthritis especially noteworthy for the medial femoral compartment, and less so to the lateral compartment. He concluded that appellant had no residuals from his employment injury and what he did suffer from was ongoing osteoarthritis which had been slowly progressing over the past 10 years. Dr. Serfustini opined that appellant would benefit from joint replacement for both knees, but explained that this would treat his underlying and preexisting osteoarthritis condition which had no causal relationship to the May 24, 2008 employment injury.

Appellant nonetheless underwent total left knee arthroplasty on February 28, 2011.

On August 29, 2012 appellant, through counsel, filed a claim for a schedule award (Form CA-7).

In a September 13, 2012 letter, OWCP notified appellant of the deficiencies of his claim and requested a medical report from his physician assessing his permanent impairment based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*) and establishing that he had reached maximum medical improvement. Appellant did not respond.

By decision dated February 21, 2013, OWCP denied appellant's schedule award claim as the medical evidence of record did not establish a ratable impairment of a scheduled member.

On February 25, 2013 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

Appellant submitted a March 28, 2013 report from Dr. Demitri Adarmes, a Board-certified physiatrist and internist, in support of his schedule award claim. Dr. Adarmes found that a March 27, 2013 electromyography and nerve conduction studies had normal results with no evidence of "an acute lumbosacral plexopathy, entrapment, or peripheral neuropathy in the lower limbs." He determined that appellant had reached maximum medical improvement for his left knee as of February 28, 2012, one year from the date of his surgery. Appellant reported "no trouble with the left knee" and stated that it gave out from time to time especially with pivoting, but he did not use a cane or orthotics.

Upon examination, Dr. Adarmes found normal alignment and no varus or valgus deviation of the left leg. Crepitation was present with passive range of motion and there was a mild effusion of the knee. Appellant had a negative Lachman's test and a negative anterior/posterior drawer test and no laxity with varus and valgus stress.

Dr. Adarmes opined that appellant had two percent permanent impairment of the left leg for knee sprain based on Table 16-3,² page 509, of the A.M.A., *Guides*. He assigned a grade modifier of 1 for Functional History (GMFH) based on mild problems with gait derangement and appellant's answers to the American Academy of Orthopedic Surgeons (AAOS) lower limb questionnaire. Dr. Adarmes assigned a grade modifier of 1 for Physical Examination (GMPE) based on palpatory (crepitation) findings, and found that a grade modifier for Clinical Studies (GMCS) was not applicable in this case. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), he found that (1-1) + (1-1) + (n/a) resulted in a net grade modifier of 0, resulting in an impairment class 1, default grade C, equaling two percent permanent impairment of the left leg. Dr. Adarmes further opined that appellant had 59 percent permanent impairment of the left lower extremity for his left total knee replacement. He applied Table 16-3, p. 511, noting that the default impairment was 67 percent for class 4. Dr. Adarmes then assigned a grade modifier of 1 for functional history, a grade modifier of 2 for physical examination, and noted clinical studies as "confirmatory." When applying the net adjustment formula, he concluded that there was a net adjustment of -2, which was the maximum allowed, yielding 59 percent permanent impairment for the left total knee replacement.

On June 12, 2013 a telephonic hearing was held before an OWCP hearing representative.

By decision dated September 5, 2013, OWCP's hearing representative set aside the prior decision and remanded the case for further development regarding the extent and degree of any impairment warranting a schedule award.

² Table 16-3, pages 509-11 of the sixth edition of the A.M.A., *Guides* is entitled *Knee Regional Grid -- Lower Extremity Impairments*.

On September 25, 2013 Dr. Leonard Simpson, an OWCP medical adviser, reviewed the medical evidence and found that Dr. Adarmes' March 28, 2013 report was not sufficient to establish two percent permanent impairment of the left leg based on appellant's accepted left knee conditions. Dr. Simpson opined that according to Table 16-3 of the A.M.A., *Guides* "there would be a [c]lass 0 [to] 0 percent impairment of the left lower extremity due to any 'sequelae' following the sprain/contusion." He explained that no significant objective abnormal findings on examination or radiographic studies at maximum medical improvement would result in a class 0, equaling a zero percent impairment for the accepted left knee sprain and contusion. Dr. Simpson further indicated that Dr. Adarmes' impairment rating for the left total knee replacement was not applicable as the preexisting osteoarthritis condition was not accepted by OWCP and the related surgery was not authorized by OWCP. He found that appellant had no significant objective abnormal findings of muscle or tendon injury and determined that he had no ratable impairment according to the sixth edition of the A.M.A., *Guides*.

By decision dated August 13, 2014, OWCP denied appellant's schedule award claim on the basis that the medical evidence of record did not establish a ratable impairment of a scheduled member.

On August 20, 2014 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. A telephonic hearing was held before an OWCP hearing representative on March 23, 2015.

On March 23, 2015 appellant's counsel argued that OWCP should expand the claim to accept the following conditions based on the second opinion report of Dr. Swartz: complex medial meniscus tear of the left knee and left knee osteoarthritis.

By decision dated June 15, 2015, OWCP's hearing representative affirmed the August 13, 2014 denial of a schedule award. He found that Dr. Swartz' February 22, 2010 report did not support additional employment-related conditions and noted that since the left knee was replaced, the conditions no longer existed, and could not be rated for permanent impairment.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim, including that he or she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.³

The schedule award provision of FECA⁴ and its implementing regulations⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

³ See *A.M.*, Docket No. 13-0964 (issued November 25, 2013) (where the employee claimed entitlement to a schedule award for permanent impairment to the left lower extremity due to his employment-related lumbar condition, the Board found that the medical evidence did not establish a ratable impairment to the lower extremity resulting from his spinal condition and, therefore, denied his schedule award claim).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

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.⁶ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁷ It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.⁸ A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.⁹

A schedule award is not payable for a member, function, or organ of the body not specified in FECA or in the implementing regulations.¹⁰ As neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.¹¹ However, as FECA makes provision for the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine, if the medical evidence establishes impairment as a result of the employment injury.¹²

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013) and Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ See *Raymond E. Gwynn*, 35 ECAB 247, 253 (1983); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (January 2010). This portion of OWCP's procedures provide that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

⁹ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

¹⁰ See *Tania R. Keka*, 55 ECAB 354 (2004).

¹¹ See *id.* FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

¹² See *George E. Williams*, 44 ECAB 530 (1993). In 1966, amendments to FECA modified the schedule award provision to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.

¹³ See *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

ANALYSIS

The Board finds that appellant has not established any ratable left lower extremity impairment related to his accepted injuries entitling him to a schedule award. The medical evidence fails to establish that appellant sustained any permanent impairment to a scheduled member of the body causally related to the May 24, 2008 employment injury. OWCP accepted appellant's claim for a left knee strain and left knee contusion. However, the medical evidence of record does not establish, nor has OWCP accepted that he sustained permanent impairment to his left lower extremity due to the accepted left knee injuries.

OWCP properly relied on a September 25, 2013 report from Dr. Simpson, an OWCP medical adviser, who concluded that appellant had no permanent impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*. He reviewed the March 28, 2013 assessment of Dr. Adarmes, appellant's attending physician, who found no evidence of any consistent combination of subjective and objective findings revealing any residuals of the left knee strain or contusion as to diagnosis or range of motion. Dr. Adarmes did not properly apply the A.M.A., *Guides* when computing two percent permanent impairment of the left leg as his report was not sufficient to establish significant objective abnormal findings of muscle or tendon injury. He had found that a March 27, 2013 electromyography and nerve conduction studies had normal results with no evidence of "an acute lumbosacral plexopathy, entrapment, or peripheral neuropathy in the lower limbs." Dr. Adarmes determined that appellant had reached maximum medical improvement for his left knee as of February 28, 2012, one year from the date of his surgery. Appellant reported "no trouble with the left knee." Upon examination, Dr. Adarmes found normal alignment, no varus or valgus deviation of the left leg, and no laxity with varus and valgus stress. Appellant had a negative Lachman's test and a negative anterior/posterior drawer test.

Dr. Simpson properly reviewed the medical record and found no basis for an impairment to a scheduled member of the body.¹⁴ He determined that Dr. Adarmes' March 28, 2013 report was not sufficient to establish two percent permanent impairment of the left lower extremity based on appellant's accepted left knee conditions of contusion and strain. Dr. Simpson explained that the findings of no significant objective abnormal findings on examination or radiographic studies at maximum medical improvement would result in zero percent impairment for the accepted left knee sprain and contusion.¹⁵ Dr. Simpson further indicated that Dr. Adarmes' impairment rating for the left total knee replacement was not applicable as the preexisting osteoarthritis condition had not been accepted by OWCP and the related surgery had not been authorized by OWCP. The Board finds that OWCP's medical adviser properly concluded that there was no medical evidence of impairment to the left leg resulting from the accepted conditions and that, therefore, there was no ratable impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*.

¹⁴ The Board notes that it is appropriate for an OWCP medical adviser to review the clinical findings of the treating physician to determine the permanent impairment. See *J.H.*, Docket No. 13-0693 (issued September 16, 2013); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3 (January 2010).

¹⁵ A.M.A., *Guides*, Table 16-3.

Appellant failed to submit sufficient medical evidence to establish permanent impairment to a specified member, organ, or function of the body listed in FECA or its implementing regulations as a result of his employment-related accepted left knee strain and contusion.

Appellant may request a schedule award or an increased schedule award based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established permanent impairment related to his accepted injuries warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board