



On appeal, appellant contends that his attending physician, and not OWCP, should provide information regarding his maximum medical improvement for a schedule award.

### **FACTUAL HISTORY**

On June 16, 2014 appellant, then a 51-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that on that day he injured his left knee when he fell onto the floor while hurrying to turn in keys at the end of his shift. He submitted medical evidence from June 25 to July 10, 2014.

In an August 6, 2014, decision, OWCP denied appellant's claim as the medical evidence of record was insufficient to establish that he sustained an injury causally related to the work incident.

On August 13, 2014 appellant underwent diagnostic arthroscopy of the left knee, arthroscopic debridement, and left partial medial meniscectomy performed by Dr. Edward S. Homan, Jr., a Board-certified orthopedic surgeon. By letter dated August 29, 2014, he requested reconsideration of the August 6, 2014 decision and submitted medical evidence from June 18 to September 5, 2014.

In an October 21, 2014 decision, OWCP vacated its August 6, 2014 decision and accepted that appellant sustained a left medial meniscus tear on June 16, 2014.

On March 27, 2015 appellant filed a claim (Form CA-7) for a schedule award. In a March 30, 2015 letter, OWCP advised him of the type of medical evidence needed to establish a claim for a schedule award. Appellant subsequently informed OWCP that his physician refused to provide an impairment rating.

By letter dated May 27, 2015, QTC Medical Services, OWCP's medical appointment scheduler, notified appellant that he was scheduled for a June 12, 2015 appointment for a second opinion examination and evaluation with Dr. William Dinenberg, a Board-certified orthopedic surgeon. In a June 18, 2015 report, Dr. Dinenberg provided a history of the June 16, 2014 employment injury and appellant's medical and social background. He noted his review of the medical record. Dr. Dinenberg provided examination findings, noting that appellant ambulated with no cane, crutches, or walker, but with an antalgic gait on his left lower extremity. He had a brace wrapped around his left knee. Appellant climbed onto the examination table. Range of motion of the left knee was 0 to 80 degrees. There was no effusion, erythema, or ecchymosis. There were well-healed surgical scars consistent with a prior arthroscopy, positive medial joint line tenderness, and no lateral joint line tenderness. There was a negative anterior drawer test and negative posterior drawer test. There was also negative varus or valgus laxity. There was no patellofemoral compression pain. Thigh and calf were soft and nontender on the left. Dr. Dinenberg provided an impression of left knee medial meniscal tear and preexisting left knee degenerative joint disease. He indicated that, in accordance with Table 16-3, page 509 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a class 1 impairment for partial medial meniscectomy. Dr. Dinenberg found grade modifiers of 2 for functional history and physical examination and grade modifier of 1 for clinical studies.

He moved the default value two places to the right to find three percent permanent impairment of the left lower extremity.

On July 1, 2015 an OWCP medical adviser reviewed the medical record, including Dr. Dinenberg's June 18, 2015 findings. He agreed with Dr. Dinenberg's three percent left lower extremity impairment rating. The medical adviser opined that appellant reached maximum medical improvement on June 18, 2015, the date of Dr. Dinenberg's examination.

In a July 20, 2015 decision, OWCP granted appellant a schedule award for three percent permanent impairment of the left leg. It found that the weight of the medical evidence rested with the reports of Dr. Dinenberg and the medical adviser.

By letters dated August 10, 2015, appellant requested reconsideration. He contended that he did not request a second opinion examination. Appellant asserted that new medical evidence from his current physician, Dr. Robert R. Reppy, an osteopath, provided information regarding his maximum medical improvement for a schedule award.

In reports dated July 15 to September 10, 2015, Dr. Reppy reviewed appellant's medical records and noted his complaint of left knee pain. He listed findings on examination, and diagnosed osteoarthritis and a medial meniscus tear of the left knee. In his August 20, 2015 report, Dr. Reppy advised that appellant was approaching maximum medical improvement. Reports from appellant's physical therapist addressed his treatment from July 15 to August 26, 2015.

In a September 2, 2015 decision, OWCP denied further merit review of appellant's claim. It found that he had not submitted any new and relevant legal argument or evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</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 stands 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*.<sup>5</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>6</sup> For

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.* For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a (February 2013).

<sup>6</sup> *See id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

impairment ratings calculated on or after May 1, 2009, OWCP should advise any physician evaluating per impairment to use the sixth edition.<sup>7</sup>

The sixth edition requires identifying the impairment Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).<sup>8</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>9</sup> The sixth edition of the A.M.A., *Guides* also provides that range of motion may be selected as an alternative approach in rating impairment under certain circumstances. A rating that is calculated using range of motion may not be combined with a diagnosis-based impairment and stands alone as a rating.<sup>10</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not established that he has greater than three percent permanent impairment of the left leg. OWCP accepted that on June 16, 2014 appellant sustained a left medial meniscus tear while working as a housekeeping aid. On August 13, 2014 appellant underwent diagnostic arthroscopy of the left knee, arthroscopic debridement, and left partial medial meniscectomy.

In developing the claim, OWCP referred appellant to Dr. Dinenberg for a second opinion examination. In a June 18, 2015 report, Dr. Dinenberg provided findings on physical examination of the left knee which included range of motion from 0 to 80 degrees. He reported no effusion, erythema, ecchymosis, patellofemoral compression pain, or lateral joint line tenderness. Dr. Dinenberg found well-healed surgical scars consistent with a prior arthroscopy and positive medial joint line tenderness. He reported a negative anterior drawer test, positive drawer test, and negative varus or valgus laxity. Dr. Dinenberg further reported soft and nontender left thigh and calf. He diagnosed left knee medial meniscal tear and preexisting left knee degenerative joint disease. Dr. Dinenberg applied Table 16-3 on page 509 of the sixth edition of the A.M.A., *Guides* which provides a default, grade C, leg impairment of two percent for a class 1 partial medial meniscectomy. He assigned grade modifiers of 2 for functional history and physical examination and a grade modifier of 1 for clinical studies. Dr. Dinenberg then applied the net adjustment formula and moved the default value two places to find three percent permanent impairment of the left lower extremity.

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<sup>7</sup> Federal (FECA) Procedure Manual, *supra* note 5.

<sup>8</sup> A.M.A., *Guides* 494-531.

<sup>9</sup> *Id.* at 521.

<sup>10</sup> *L.B.*, Docket No. 12-910 (issued October 5, 2012).

<sup>11</sup> See Federal (FECA) Procedure Manual, *supra* note 5 at Chapter 2.808.6(f) (February 2013).

OWCP's medical adviser reviewed this report on July 1, 2015 and agreed with Dr. Dinenberg's impairment rating.

The Board finds that the weight of the medical evidence is represented by the reports of Dr. Dinenberg and OWCP's medical adviser who reviewed the findings on examination and properly applied the A.M.A., *Guides*. These physicians agreed that appellant has three percent permanent impairment of his left lower extremity due to his partial medial meniscectomy. There is no current medical evidence of record, in conformance with the A.M.A., *Guides*, which supports a greater impairment.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128 of FECA,<sup>12</sup> OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>13</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.<sup>14</sup> Section 10.608(b) of the implementing regulations state that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

Appellant disagreed with OWCP's schedule award decision granting him a schedule award for three percent impairment of the left leg. He requested reconsideration.

In his August 10, 2015 request for reconsideration and on appeal, appellant asserted that he did not request a second opinion examination. This assertion, however, does not show a legal error by OWCP or a new and relevant legal argument.

The underlying issue in this case is whether appellant submitted medical evidence establishing that he has more than three percent impairment of the left leg. That is a medical issue which must be addressed by relevant new medical evidence.<sup>16</sup> Appellant submitted

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<sup>12</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>13</sup> 20 C.F.R. § 10.606(b)(3).

<sup>14</sup> *Id.* at § 10.607(a).

<sup>15</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>16</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

medical reports from Dr. Reppy, an attending physician, who found that he had osteoarthritis and a medial meniscus tear of the left knee. Dr. Reppy noted that he was approaching maximum medical improvement. Although his reports are new, Dr. Reppy indicates that appellant had not reached maximum medical improvement and did not provide an opinion as to whether appellant had a left lower extremity impairment greater than the three percent already awarded. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>17</sup> The Board finds, therefore, that Dr. Reppy's reports are insufficient to warrant further merit review of the claim.

The reports dated July 15 to August 26, 2015 from appellant's physical therapist, while new, are also insufficient to warrant further merit review as physical therapists are not considered physicians as defined under FECA.<sup>18</sup> The Board finds, therefore, that this evidence is not relevant to the underlying medical issue on appeal and is insufficient to warrant further merit review of appellant's claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof to establish more than three percent permanent impairment of the left lower extremity, for which he has received a schedule award. The Board further finds that OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>17</sup> *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>18</sup> See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 2 and July 20, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 21, 2016  
Washington, DC

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

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

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