



impairment. She further asserts that OWCP did not contact her prior physician regarding her right knee impairment and improperly based its impairment rating on OWCP's medical adviser's opinion.

### **FACTUAL HISTORY**

On September 19, 2013 appellant, then a 53-year-old sign language interpreter, filed a traumatic injury claim (Form CA-1) alleging that she fell in the parking lot at work and injured her knees and left upper extremity. She did not stop work, and in October 2013 transferred to a position as an Equal Employment Opportunity (EEO) assistant.

Dr. Jeff Sellman, Board-certified in family and sports medicine, began treating appellant on September 23, 2013. He noted a history that she previously had right elbow, right wrist/hand, left shoulder, left foot/ankle arthroscopy, and a right hand fracture repair. Dr. Sellman diagnosed left elbow sprain/strain, right knee bursitis and pain, contusion of knee, and wrist sprain.

On October 11, 2013 OWCP accepted the conditions of sprains of left wrist and elbow, contusion of left knee, and bursitis of the right knee.

On December 5, 2013 Dr. Grant Garlick, a Board-certified orthopedic surgeon, began treating appellant's right knee. He reported September 17, 2013 magnetic resonance imaging (MRI) scan findings of a full thickness patellar defect.<sup>3</sup> Dr. Garlick diagnosed right knee patellofemoral degenerative joint disease and acute on chronic injury. He recommended arthroscopic surgery and advised that appellant could return to her usual job with regard to her right knee only.

On December 8, 2013 Dr. Garlick performed arthroscopic abrasion arthroplasty on the right knee. He noted preoperative and postoperative diagnoses of right knee chondromalacia patella. Appellant returned to part-time work on January 13, 2014. On January 16, 2014 Dr. Garlick provided work restrictions with regard to the right knee and advised that they would apply for four to eight weeks. Appellant returned to full-time work as a telecommuter on January 17, 2014 and to work at the employing establishment on February 14, 2014.

On March 5, 2014 OWCP informed appellant that left carpal tunnel syndrome and left ulnar nerve lesion had been accepted.

Dr. Garlick provided follow-up right knee care. On April 17, 2014 he reported that three months following arthroscopic surgery, appellant had no complaints of pain and denied instability or recurrent effusions. Examination of the right knee demonstrated 0 to 130 degrees of range of motion, mild patellofemoral crepitation, and no patellofemoral grind. Appellant was nontender to palpation in the peripatellar region and about the medial and lateral menisci. Neither varus nor valgus laxity were present and the anterior and posterior drawer were negative. Dr. Garlick advised that appellant could perform her usual job without restrictions regarding her right knee.

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<sup>3</sup> A copy of the MRI scan report is not found in the case record.

In October 2014 appellant moved from Florida to South Carolina and transferred to a Veterans Administration facility there.

On July 15, 2015 appellant filed a claim for a schedule award (Form CA-7).

On August 20, 2015 Dr. James W. Dyer, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the record and advised that maximum medical improvement was reached on April 16, 2015. Regarding the right lower extremity, he advised that, in accordance with Table 16-3, Knee Regional Grid, appellant had a class 1 impairment for a diagnosis of patellofemoral arthritis, which had a default value of three percent.<sup>4</sup>

By decision dated October 21, 2015, appellant was granted a schedule award for three percent permanent impairment of the right leg, for 8.64 weeks of compensation, to run from May 16 to June 15, 2015.<sup>5</sup>

### **LEGAL PRECEDENT**

It is the claimant's burden to establish a permanent impairment of a scheduled member or function as a result of any employment injury.<sup>6</sup>

The schedule award provision of FECA<sup>7</sup> and its implementing federal regulations,<sup>8</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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>9</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>10</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability

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<sup>4</sup> The record also includes medical evidence and OWCP development regarding appellant's left upper extremity, not at issue in the current appeal. *See infra*, note 21.

<sup>5</sup> The Board notes that from the date of injury and for absences around her surgical procedures, appellant received compensation for medical and therapy appointments. The last wage-loss compensation received was for two hours on June 26, 2014.

<sup>6</sup> *See Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> *Id.* at § 10.404(a).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *see also* Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

and Health (ICF).<sup>11</sup> Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).<sup>12</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>13</sup> Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>14</sup> Section 16.2a of the A.M.A., *Guides*, provides that if the class selected is defined by physical examination findings or clinical studies results, these same findings may not be used as grade modifiers to adjust the rating.<sup>15</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.<sup>16</sup>

### ANALYSIS

The Board finds that appellant has not established permanent impairment greater than three percent for the right leg, for which she received a schedule award. OWCP accepted right knee bursitis.

On December 8, 2013 Dr. Garlick performed arthroscopic abrasion arthroplasty for preoperative and postoperative diagnoses of right knee chondromalacia patella. In an April 17, 2014 report, he reported that appellant had no complaints of pain and denied instability or recurrent effusions. Dr. Garlick noted no positive physical examination findings and advised that appellant was not tender to palpation, had no varus or valgus laxity, and that anterior and posterior drawer signs were negative. He concluded that appellant could perform her usual job without restrictions regarding her right knee.

After appellant claimed a schedule award, Dr. Dyer, OWCP's medical adviser, reviewed the medical record including Dr. Garlick's reports. He advised that maximum medical improvement had been reached on April 16, 2015. Regarding the right lower extremity, OWCP's medical adviser indicated that, in accordance with Table 16-3, Knee Regional Grid, appellant had a class 1 impairment for a diagnosis of patellofemoral arthritis, which had a default value of three percent. This is the only medical report of record that provides an impairment

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<sup>11</sup> A.M.A., *Guides*, *supra* note 2 at 4, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

<sup>12</sup> *Id.* at 494-531.

<sup>13</sup> *Id.* at 521.

<sup>14</sup> *Id.* at 23-28.

<sup>15</sup> *Id.* at 500.

<sup>16</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

evaluation of appellant's right leg under the A.M.A., *Guides*. The Board finds that OWCP properly found three percent permanent impairment of the right lower extremity.

As to appellant's assertion on appeal that OWCP did not contact Dr. Garlick regarding her right knee impairment and improperly based its impairment rating on OWCP's medical adviser, as noted above, appellant has the burden of proof to establish that she sustained a permanent impairment of a scheduled member or function as a result of any employment injury.<sup>17</sup> Moreover, OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and extent of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.<sup>18</sup> Dr. Dyer did so in this case. There is no probative medical evidence establishing a greater degree of impairment.<sup>19</sup>

On appeal appellant also requested a left upper extremity schedule award. The accepted conditions include left wrist, elbow, and forearm sprains; left carpal tunnel syndrome; and left ulnar nerve lesion. Although the record contains evidence regarding appellant's left upper extremity,<sup>20</sup> the October 21, 2015 OWCP schedule award decision does not include a finding regarding appellant's left arm. Also, on October 2, 2015 appellant requested that OWCP expand her claim to include additional conditions. The record before the Board does not include a final OWCP decision on this issue either. The Board's jurisdiction is limited to reviewing final decisions of OWCP.<sup>21</sup>

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 failed to establish more than three percent permanent impairment of the right leg for which she received a schedule award.

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<sup>17</sup> See *Tammy L. Meehan*, *supra* note 5.

<sup>18</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

<sup>19</sup> See *M.P.*, Docket No. 15-383 (issued July 1, 2015).

<sup>20</sup> *Supra* note 4.

<sup>21</sup> 20 C.F.R. § 501.2(c); see *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 21, 2015 decision of the Office of Workers' Compensation is affirmed.

Issued: July 14, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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