

**United States Department of Labor
Employees' Compensation Appeals Board**

V.B., Appellant)
and) Docket No. 16-0550
DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PATROL,) Issued: June 7, 2016
Brownsville, TX, Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 1, 2016 appellant filed a timely appeal of an October 1, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has established that she has more than eight percent permanent impairment of the left lower extremity, for which she received a schedule award.

On appeal appellant argues that she is entitled to a greater schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 21, 2013 appellant, then a 52-year-old customs and border patrol officer, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained left knee injuries when she struck her left knee on the metal base of a car seat while escaping the moving vehicle. OWCP accepted the claim for left leg and knee sprain, left medial meniscus tear, and left loose body in knee. It also authorized left arthroscopic surgery, which was performed on April 16, 2014. Appellant received compensation benefits on the supplemental rolls as of January 10, 2014.

On December 17, 2014 appellant filed a claim for a schedule award (Form CA-7).

In a November 24, 2014 report, Dr. Raul A. Marquez, a treating physician, diagnosed knee pain, anterior cruciate ligament (ACL) tear, lateral meniscus tear, and medial meniscus tear. He noted that on April 16, 2014 appellant underwent ACL reconstruction surgery of the left knee. Appellant reported intermittent pain getting into and out of a car. A physical examination of the left knee revealed full range of motion with minimal tenderness on palpation of the medial and lateral compartments. Using Table 16-3, page 510 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Marquez opined that the diagnosis was a class 1 with a grade B, which he determined equaled eight percent permanent lower extremity impairment. He determined that appellant had reached maximum medical improvement on November 24, 2014.

OWCP referred appellant's schedule award claim to Dr. Michael M. Katz, an OWCP medical adviser, to provide an impairment rating for loss of use of the left lower extremity under the sixth edition of the A.M.A., *Guides*. In a February 11, 2015 report, the OWCP medical adviser recommended that OWCP contact Dr. Marquez to provide clarification regarding the method he used to determine appellant's permanent impairment.

On June 4, 2015 Dr. Marquez provided clarification of his November 24, 2014 impairment determination. He reported that he based his impairment determination on appellant's left knee ACL instability. Dr. Marquez noted that appellant had limitations due to complaints of pain and a physical examination revealed mild laxity. Appellant noted difficulty getting into and out of a car. Dr. Marquez noted that a physical examination modifier was not applicable as a physical examination was used to determine the class of diagnosis. He found a grade modifier of one for mild problem under functional history using Table 16-5, page 515. Dr. Marquez noted the key diagnosis was a class one using Table 16-3, page 510 with a grade B, which provided an eight percent left lower extremity permanent impairment.

On July 13, 2015 the OWCP medical adviser, Dr. Katz, reviewed Dr. Marquez's June 4, 2015 report and concurred with his finding that appellant had eight percent permanent left lower extremity impairment. Dr. Katz noted a diagnosis of cruciate or collateral ligament mild laxity under the Knee Regional Grid -- Lower Extremity Impairment, Table 16-3, page 510 of the A.M.A., *Guides*. He noted that this diagnosis was a class one with a default value of 10 percent. In assigning modifiers, Dr. Katz noted Dr. Marquez's findings and advised that for diagnosed condition appellant was a grade one for functional history and a grade zero for clinical studies. No value was assigned to physical examination as it was not applicable as the class of diagnosis

was based on physical examination findings. Next, Dr. Katz applied the net adjustment formula, which yielded a net adjustment of minus one and found that this moved the default value of C to a grade B, resulting in eight percent left lower extremity impairment. He determined November 24, 2014 as the date of maximum medical improvement as this was the date of the original impairment examination.

By decision dated October 1, 2015, OWCP granted appellant a schedule award for eight percent permanent impairment of the left lower extremity. The award ran for 23.04 weeks for the period November 24, 2014 to May 4, 2015.

LEGAL PRECEDENT

Under section 8107 of FECA² and section 10.404 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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.⁴

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 and Health (ICF).⁵ Under the sixth edition, the evaluator identifies the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁶ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁷

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.⁸

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404

⁴ D.J., 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ A.M.A., *Guides* (6th ed., 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁶ A.M.A., *Guides* (6th ed., 2009), pp. 383-419.

⁷ *Id.* at 411.

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013). See C.K., Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

ANALYSIS

OWCP accepted appellant's claim for left leg and knee sprain, left medial meniscus tear, and left loose body in knee. It also authorized left knee arthroscopic surgery, which was performed on April 16, 2014 by Dr. Marquez. Appellant subsequently filed a claim for a schedule award. By decision dated October 1, 2015, OWCP granted her a schedule award for eight percent permanent impairment of the left lower extremity. The issue on appeal is whether appellant established a greater impairment rating. The Board finds that the evidence of record does not establish to more than an eight percent left lower extremity permanent impairment, for which appellant received a schedule award.

In reports dated November 24, 2014 and June 4, 2015, Dr. Marquez used Table 16-3, page 510 to find that appellant was a class one, grade B. In reaching this determination he followed the assessment formula of the sixth edition of the A.M.A., *Guides* and advised that, in accordance with Chapter 16, for mild cruciate or collateral ligament laxity of the knee, appellant had eight percent permanent impairment of the left lower extremity.

OWCP's medical adviser Dr. Katz reviewed Dr. Marquez's reports and agreed with his conclusion that appellant had eight percent permanent impairment of the left lower extremity. Dr. Katz noted that in accordance with Chapter 16, for mild cruciate or collateral ligament laxity, using Table 16-3, Knee Regional Grid, appellant would fit a class 1 category, yielding a default grade C for 10 percent impairment.⁹ He then determined whether there were any applicable grade adjustments. These include adjustments for GMFH, GMPE, and GMCS. The grade modifiers are used in the net adjustment formula to calculate a net adjustment.¹⁰ The final impairment grade is determined by adjusting the grade up or down from the default value C by the calculated net adjustment. Dr. Katz noted Dr. Marquez's findings and noted a functional history grade modifier of one, a clinical studies grade modifier of zero, and that the physical examination was not applicable.¹¹ Applying the net adjustment formula resulted in a modifier of minus one, which resulted in a grade adjustment from C to B.¹² The corresponding lower extremity impairment for a class 1, grade B cruciate or collateral ligament injury is eight percent.

The Board finds that Dr. Marquez and the OWCP medical adviser, Dr. Katz, properly applied the A.M.A., *Guides* to rate permanent impairment of appellant's left lower extremity. Each physician explained how his impairment rating was determined and each physician found that appellant had an eight percent right leg impairment under the A.M.A., *Guides*. There is no medical evidence of record demonstrating a greater permanent impairment.

On appeal appellant argues that she is entitled to a greater impairment as the record did not include the fact that her ACL had been replaced with one from a cadaver and the procedure resulted in painful and extensive physical therapy, and required an overnight hospital stay. The

⁹ *Supra* notes 6, 7.

¹⁰ A.M.A., *Guides* 509-11, Table 16-3.

¹¹ *Id.* at 521

¹² *Id.* at 516-17.

medical evidence of record establishes eight percent permanent left lower extremity impairment. There is no evidence showing 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.

CONCLUSION

The Board finds that appellant has not established entitlement to a greater than eight percent permanent impairment of the left lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 1, 2015 is affirmed.

Issued: June 7, 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