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

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| **D.B., Appellant** | ) | |
| **and** | ) | **Docket No. 16-0617** |
| | ) | **Issued: June 9, 2016** |
| **U.S. POSTAL SERVICE, POST OFFICE, Corning, NY, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On February 15, 2016 appellant, through counsel, filed a timely appeal from a December 15, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish more than two percent impairment of the left lower extremity, for which he received a schedule award.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

OWCP accepted that on December 6, 2010 appellant, then a 54-year-old carrier, sustained a sprain, medial meniscus tear, and internal derangement of the medial meniscus of the left knee when he stepped out of his jeep on his route. It authorized left knee partial medial meniscectomy performed on March 18, 2011 by Dr. Matthew R. Brand, a Board-certified orthopedic surgeon.

Appellant returned to work four hours a day on July, 1, 2011 based on a July 22, 2011 medical opinion of Dr. Mario Leao O. Lecuona, a Board-certified orthopedic surgeon and OWCP referral physician, who found that appellant had residuals and mild-to-moderate disability of the left knee due to his accepted employment injuries. On September 29, 2011 he returned to full-time work with no restrictions.

On May 11, 2012 appellant filed a claim for a schedule award (Form CA-7). In an October 12, 2012 impairment evaluation, Dr. Karen M. Garvey, an attending physician Board-certified in internal and occupational medicine, reviewed appellant's medical records, noted his accepted left knee injuries, and provided his social, medical, and occupational history. She provided examination findings for the knees. Dr. Garvey diagnosed sprain of other specified sites of the left knee and leg, tear of the medial meniscus of the left knee, and other internal derangement of the left knee. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), she rated impairment of appellant's left leg. Dr. Garvey found that he had two percent impairment for a knee sprain, 10 percent impairment for a medial meniscus tear, 10 percent impairment for internal derangement for patellofemoral joint chrondromalacia, and 30 percent impairment for primary knee joint arthritis for the medial compartment, totaling 52 percent impairment of the left leg. She advised that appellant had reached maximum medical improvement on April 19, 2012, the date of Dr. Brand's examination.[2]

On July 23, 2013 Dr. Henry J. Magliato, a Board-certified orthopedic surgeon and an OWCP medical adviser, reviewed the medical record, including Dr. Garvey's October 12, 2012 report. He believed that she over-estimated the degree of arthritis based upon operative findings and diagnostic test results of appellant's left knee. Dr. Magliato related that he would place the diagnosis of arthritis or chondromalacia into a class 2 category since the chondromalacia only affected the medial femoral condyle and was described as grade 2 and grade 3. There was nothing noted on the lateral femoral condyle and there were no arthritic changes on the tibial condyles. The patellofemoral joint area was listed as grade 2 chondromalacia. Dr. Magliato noted that December 6, 2010 left knee x-rays indicated no arthritis. A December 15, 2010 magnetic resonance imaging (MRI) scan found grade 2 medial compartment chondromalacia. Dr. Magliato opined that class 3 on page 511 of the sixth edition of the A.M.A., *Guides* was for severe arthritis and a one-millimeter cartilage interval did not apply in this case. He recommended that Dr. Garvey revise her calculations as indicated. Dr. Magliato concluded that

[2] In a medical April 19, 2012 report, Dr. Brand assessed knee pain and opined that appellant had reached maximum medical improvement and had a permanent disability regarding his left knee.

the most impairment to the knee was class 2 impairment on page 511 based on appellant's arthritic condition.

By letter dated August 16, 2013, OWCP requested that Dr. Garvey review the medical adviser's July 23, 2013 report and provide a clarifying opinion.

In an October 17, 2013 report, Dr. Garvey found that appellant had 32 percent left leg impairment under the sixth edition of the A.M.A., *Guides*. She noted her two percent impairment rating for a knee sprain. Using Appendix 3-2 (Pain Disability Questionnaire) on page 44, appellant scored 48 which correlated with a mild problem. Under Table 16-6, page 516, appellant had a Functional History (GMFH) of zero due to a normal gait. Dr. Garvey did not assess a grade modifier for Physical Examination (GMPE) because the physical examination defined the class. She assessed a Clinical Studies (GMCS) grade modifier of 2 under Table 16-8, page 519, as clinical studies confirmed moderate pathology based on a magnetic resonance imaging (MRI) scan findings of a full-thickness radial tear of the medial meniscal root attachment that was five millimeters wide with medial extrusion. The inferior articular surface tear involved the body of the medial meniscus that was seven millimeters long with horizontal cleavage plane extension throughout the body and into the posterior horn. There was grade 3 medial patellar facet and grade 2 lateral patellar facet chondromalacia along with grade 2 medial trochlear and medial compartment chondromalacia. Using the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (0-1) + N/A + (2-1), she found no net adjustment, resulting in a two percent impairment of the left leg. For the medial meniscus tear, Dr. Garvey used range of motion measurements to rate impairment. Using Figure 16-8 on page 546, she found that flexion to 115 degrees was normal but flexure contracture of 9 degrees correlated with mild impairment of 10 percent under Table 16-23 on page 549. Dr. Garvey found class 1 impairment for mild severity which represented 10 percent leg impairment under Table 16-25 on page 550. For left knee internal derangement, she found that appellant's arthritis diagnosis was consistent with chondromalacia findings as the March 18, 2011 arthroscopy revealed findings in both the patellofemoral joint and the medial compartment. Using Table 16-3 on page 511, Dr. Garvey found that a diagnosis of grade 2 patellofemoral chondromalacia with a 2-millimeter cartilage interval was a class 1 impairment with a default value of 10 percent. She noted that this was duplicative of medial compartment chondromalacia and that the higher of the two diagnoses would be used. Regarding the medial compartment, Dr. Garvey found grade 2 and grade 3 chondromalacia which represented a class 2 and class 3 impairment, respectively. A diagnosis of primary knee joint arthritis represented a class 2 impairment and the default impairment rating was 20 percent. Using Appendix 3-2 on page 44, appellant had a score of 48 which correlated with a mild problem. Under Table 16-6 on page 516, Dr. Garvey assessed a grade modifier zero for functional history for normal gait. She assessed a grade modifier 1 for physical examination under Table 16-7 on page 517 which revealed minimal palpatory findings consistently documented without observed abnormalities. Utilizing Table 16-8 on page 519, Dr. Garvey assessed a clinical studies grade modifier of 2 based on MRI scan findings and the operative report. Using Table 16-3 on page 511 for arthritis, she assigned a class 2, grade C impairment for medial compartment grade 2 and grade 3 chondromalacia of the medial femoral condyle. The net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (0-1) + (1-1) + (2-1), yielded a grade adjustment of zero. Dr. Garvey found that appellant's primary knee joint arthritis for the medial compartment and grade 2 and grade 3 chondromalacia represented a class 2, grade C, 20 percent left leg impairment. She determined that his final impairment was 2

percent for a knee sprain, 10 percent for a tear of the medial meniscus of the knee, and 20 percent for primary knee joint arthritis in the medial compartment. This yielded 32 percent left leg impairment.

On May 27, 2014 Dr. Magliato reviewed Dr. Garvey's October 17, 2013 report. He found that her report had no value since she had combined the diagnoses of sprain, torn meniscus, patellofemoral chondromalacia, and degeneration of the medial compartment for the same knee and obtained four to five different values which she combined to arrive at 32 percent left leg impairment. Dr. Magliato noted that, under the sixth edition of the A.M.A., *Guides*, the correct method for calculating impairment involved the selection of one main diagnosis. He stated that the probable diagnosis was knee osteoarthritis. Dr. Magliato recommended a second opinion examination by a physician familiar with the sixth edition of the A.M.A., *Guides*.

On September 16, 2014 OWCP referred appellant to Dr. Sury M. Putcha, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a September 30, 2014 report, Dr. Putcha noted appellant's history of injury and medical history. He reviewed his medical records and provided findings on physical examination of the lower limbs. Dr. Putcha reported negative straight leg raising tests. The hip joints had 120 degrees of flexion and 50 degrees of abduction. There was no hip pain. Musculature was normal. The right lower extremity had full extension and flexion to 135 degrees. The left knee had full extension and flexion to 120 degrees. Mild varus alignment was noted in both knees. The long axis of the knees appeared to be about two degrees. The left knee had medial compartmental arthritis palpable with evidence of medial distal femoral and proximal tibial hypertrophic ridging. Knee ligaments were stable. There was no effusion, palpable crepitation, instability, calf tenderness, or edema in the legs. The left calf was 14.5 inches and the right calf was 15 inches. The left thigh was 18 inches and the right thigh was 18.5 inches at about 6 inches above the knee. Appellant's gait was associated with mild limping in the left leg. He had normal muscle tone and deep tendon reflexes. Dr. Putcha diagnosed status post partial medial meniscectomy of left knee. He noted that presently appellant had medial compartment arthritis of the left knee. Dr. Putcha found that he had reached maximum medical improvement on March 18, 2014, one year from the date of his left knee surgery. Utilizing Table 16-3 (Knee Regional Grid) on page 509 of the sixth edition of the A.M.A., *Guides*, he found that a diagnosis of partial medial meniscectomy represented a class 1 impairment. Dr. Putcha assessed grade modifier 1 for functional history under Table 16-6 on page 516 as appellant had a mild limp. He assessed a grade modifier 1 for physical examination under Table 16-7 on page 517 as appellant had atrophy. Dr. Putcha assessed a grade modifier 1 for clinical studies under Table 16-8 on page 519. He applied the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (1-1) + (1-1) + (1-1), and calculated a grade adjustment of zero, resulting in two percent permanent impairment of the left lower extremity.

Dr. Magliato reviewed Dr. Putcha's report on February 11, 2015 and agreed with his two percent left leg impairment rating. However, he found that appellant had reached maximum medical improvement on September 30, 2014 and not on March 18, 2012 as found by Dr. Putcha. Dr. Magliato noted that September 30, 2014 was the date of appellant's final impairment evaluation.

In a February 26, 2015 decision, OWCP granted appellant a schedule award for two percent impairment of the left leg based on Dr. Magliato's opinion.

By letter dated March 9, 2015, appellant, through counsel, requested a telephone hearing before an OWCP hearing representative, which was held on October 5, 2015.

In a December 15, 2015 decision, an OWCP hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Putcha as supported by medical adviser Dr. Magliato and affirmed the February 26, 2015 decision.

## ***LEGAL PRECEDENT***

The schedule award provision of FECA[3] and its implementing federal regulations four set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions, and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[4] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5] For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.[6] 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.[7]

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[8] After the Class of Diagnosis (CDX) is determined from the Knee Regional Grid (including identification

[3] 5 U.S.C. § 8107.

[4] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[5] *Id.*

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[7] *See Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.a.3 (January 2010). This portion of OWCP procedures provides that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

[8] *See* A.M.A., *Guides* 509-11 (6th ed. 2009).

of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a 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.[10]

## ***ANALYSIS***

The Board finds that appellant has no more than two percent impairment of the left lower extremity. OWCP accepted appellant's claim for sprain, medial meniscus tear, and internal derangement of the medial meniscus of the left knee. It authorized a left knee partial medial meniscectomy performed on March 8, 2011. The Board finds that the weight of the medical evidence rests with the opinions of Dr. Putcha, an OWCP referral physician, and Dr. Magliato, an OWCP medical adviser, who properly applied the sixth edition of the A.M.A., *Guides*.

In an October 12, 2012 report, Dr. Garvey, appellant's treating physician, found that appellant had two percent impairment for a knee sprain, 10 percent impairment for a medial meniscus tear, 10 percent impairment for internal derangement for patellofemoral joint chrondromalacia, and 30 percent impairment for primary knee joint arthritis for the medial compartment, totaling 52 percent impairment of the left lower extremity under the sixth edition of the A.M.A., *Guides*.

Dr. Magliato, OWCP's medical adviser, reviewed Dr. Garvey's findings on July 23, 2013 and disagreed with her impairment rating because she over-estimated the degree of appellant's arthritis. He advised that appellant's arthritis or chondromalacia should be placed in a class 2 category as the condition only affected the medial femoral condyle and was described as grade 2 and grade 3. Dr. Magliato noted that nothing was found on the lateral femoral condyle, there were no arthritic changes on the tibial condyles, and the patellofemoral joint area was listed as grade 2 chondromalacia. He further noted that the December 6, 2010 left knee x-rays showed no arthritis and a December 15, 2010 MRI scan found grade 2 medial compartment chondromalacia. Dr. Magliato maintained that class 3 on page 511 of the sixth edition of the A.M.A., *Guides* was for severe arthritis and a one-millimeter cartilage interval did not apply in this case. He advised that Dr. Garvey should be asked to revise her calculations.

In an October 17, 2013 supplement report, Dr. Garvey found that appellant had 32 percent impairment of the left lower extremity under the sixth edition of the A.M.A., *Guides*. She reiterated that he had 2 percent impairment for a knee sprain and 10 percent impairment for a medial meniscus tear. Dr. Garvey found that appellant had 20 percent impairment for grade 2 chrondromalacia in the patellofemoral joint and grade 3 arthritis in the medial compartment. On May 27, 2014 Dr. Magliato disagreed with Dr. Garvey's October 17, 2013 32 percent left leg

[9] *Id.* at 515-22.

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

impairment rating and opined that she had incorrectly applied the A.M.A., *Guides*. He related that she had combined the diagnoses of sprain, torn meniscus, patellofemoral chondromalacia, and degeneration of the medial compartment and obtained four to five different values for each diagnosis which she combined to calculate her impairment rating. Dr. Magliato noted that the correct method for calculating impairment involved the selection of one main diagnosis under the sixth edition of the A.M.A., *Guides*.[11] He recommended a referral for a second opinion to provide an impairment rating using the sixth edition of the A.M.A., *Guides*.

In a September 30, 2014 report, Dr. Putcha, a second opinion physician, reviewed the medical record. He reported essentially normal findings on examination of the lower extremities with the exception of mild varus alignment in both knees, medial compartmental arthritis palpable with evidence of medial distal femoral and proximal tibial hypertrophic ridging in the left knee, and a gait associated with mild limping in the left leg. Dr. Putcha diagnosed status post partial medial meniscectomy of the left knee. He applied Table 16-3 (Regional Knee Grid) 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. Dr. Putcha assigned a grade modifier 1 each for functional history, physical examination, and clinical studies under Table 16-6, page 516, Table 16-7, page 517, and Table 16-8, page 519, respectively. He applied the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (1-1) + (1-1) + (1-1), which resulted in a zero percent grade adjustment which yielded two percent permanent impairment of the left lower extremity.

On February 11, 2015 Dr. Magliato reviewed Dr. Putcha's September 30, 2014 report and agreed with his impairment rating.

The Board finds that the weight of the medical evidence is represented by the reports of Dr. Putcha 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 two 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 greater impairment.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds that counsel's contentions are not substantiated.

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 did not meet his burden of proof to establish more than two percent impairment of the left lower extremity, for which he received a schedule award.

[11] *See* A.M.A., *Guides* 449 (6th ed. 2009) (if more than one diagnosis in a region can be used, the one that provides the most clinically accurate and causally-related impairment should be used).

## ***ORDER***

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

Issued: June 9, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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