

On appeal counsel contends that OWCP's medical adviser disregarded appellant's preexisting condition and improperly minimized the impairment rating provided by his treating physician.

FACTUAL HISTORY

OWCP accepted that appellant, a 53-year-old training instructor, sustained a right knee medial meniscus tear, posterior horn, on October 23, 2012 while doing incline leg presses in the performance of duty. It authorized right knee surgery which appellant underwent on December 10, 2013. Appellant returned to full-time, full-duty work effective January 6, 2014.

On May 2, 2014 appellant, through counsel, filed a claim for a schedule award and submitted an April 14, 2014 report from Dr. Michael Platto, a Board-certified physiatrist, who opined that appellant had nine percent permanent impairment of the right lower extremity. Dr. Platto found that appellant had reached maximum medical improvement and required no further surgical treatment. He placed appellant in class 1 based on his diagnosis of meniscal injury, partial (medial and lateral meniscectomy), meniscal tear, or meniscal repair according to Table 16-3,³ page 509, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Platto assigned a grade modifier of 1 for Functional History (GMFH) due to antalgic gait, asymmetric shortened stance, favoring the right knee, American Academy of Orthopedic Surgeons (AAOS) score showing a mild deficit, and lack of brace or other orthotic use. He assigned a grade modifier of 3 for Physical Examination (GMPE) based on mild palpatory findings and a nine degree varus deformity found upon x-ray. Dr. Platto stated that "although there is no table in the [sixth edition of the A.M.A.] *Guides* to rate severity of varus deformity, in the [fifth edition of the A.M.A.] *Guides*, Table 17, p. 537, it does state that for varus deformity between 8 and 12 percent, this would be classified as severe, or grade modifier 3." He found that a grade modifier of 1 for Clinical Studies (GMCS) was not applicable as appellant underwent an operation to fix his medial meniscus tear. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Platto found that (1-1) + (3-1) + (n/a) resulted in a net grade modifier of 2, equaling a 3 percent permanent impairment of the right lower extremity. Dr. Platto further found a preexisting condition based upon his review of a magnetic resonance imaging (MRI) scan dated November 7, 2012 which showed evidence of moderate joint degeneration in the anterior and medial compartments. He stated that this degree of degeneration would not be expected to have occurred just two weeks after a traumatic event and opined that appellant's preexisting arthritis here may have contributed to a medial meniscus tear. Dr. Platto noted that a weight-bearing x-ray revealed a three-millimeter (mm) medial joint space interval. He placed appellant in class 1 based on his diagnosis of three mm cartilage interval for primary joint arthritis and determined that appellant had a default rating of seven percent permanent impairment to the right lower extremity according to Table 16-3, page 511, of the A.M.A., *Guides*. Using the net adjustment modifier of 2 based on his previously explained grade modifiers, Dr. Platto concluded that appellant had a nine percent permanent impairment of the right lower extremity.

³ Table 16-3, pages 509-511 of the sixth edition of the A.M.A., *Guides* is entitled *Knee Regional Grid – Lower Extremity Impairments*.

On June 17, 2014 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the medical record and determined that the date of maximum medical improvement was April 14, 2014, the date of Dr. Platto's impairment examination. Dr. Berman found that Dr. Platto's impairment rating could not be accepted because the only accepted condition was the right knee medial meniscal tear, posterior horn. He further found that Dr. Platto's grade modifier of 3 for physical examination was not properly based on the sixth edition of the A.M.A., *Guides*. Dr. Berman agreed with Dr. Platto's grade modifier of 1 for functional history and assigned a grade modifier of 1 for clinical studies. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), OWCP medical adviser found that (1-1) + (1-1) + (1-1) resulted in a net grade modifier of 0, resulting in an impairment class 1, default grade C, equaling two percent permanent impairment of the right lower extremity under Table 16-3, page 509, of the A.M.A., *Guides*.

By decision dated July 1, 2014, OWCP granted appellant a schedule award for two percent permanent impairment of the right lower extremity. The award ran for 5.76 weeks for the period April 14 through May 24, 2014.

On July 8, 2014 appellant, through counsel, requested reconsideration and submitted reports dated November 20, 2013 through July 23, 2014 from Dr. John Christoforetti, a Board-certified orthopedic surgeon, who diagnosed medial compartment osteoarthritis and opined that appellant sustained an employment-related exacerbation of his preexisting osteoarthritis due to loss of the meniscus.

By decision dated July 28, 2014, OWCP expanded appellant's claim to include aggravation of preexisting osteoarthritis of the right knee.

Appellant submitted hospital records dated January 19, 2014 and reports from Dr. Christoforetti dated July 9 through August 27, 2014 indicating that appellant underwent a course of right knee injection treatments.

On September 20, 2014 Dr. Morley Slutsky, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the medical record and a statement of accepted facts. He determined that the date of maximum medical improvement was April 14, 2014, the date of Dr. Platto's impairment examination. Dr. Slutsky concurred with Dr. Platto that the most impairing diagnosis was the primary knee joint arthritis with three mm of joint space remaining and placed appellant in a class 1. He also concurred with Dr. Platto's grade modifier of 1 for functional history and his opinion that a grade modifier for clinical studies was not applicable in appellant's case. Dr. Slutsky disagreed, however, with Dr. Platto's grade modifier of 3 for physical examination. He explained that Dr. Platto used x-rays to measure the amount of varus angulation, but the radiologist who reviewed the same x-rays did not find a significant varus and, in fact, did not mention the varus at all. Therefore, Dr. Slutsky found that the varus was not a consistent observation and could not be used for a physical examination grade modifier. He further found that Dr. Platto documented only one measurement for each joint motion, which was not consistent with the requirements set forth in the A.M.A., *Guides*.⁴ As such, the range of

⁴ The A.M.A., *Guides*, page 464, requires range of motion to be measured at least three times. See *J.J.*, Docket No. 14-1143 (issued December 10, 2014).

motion method of rating impairment was not valid. Dr. Slutsky assigned a grade modifier of 1 for physical examination. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), OWCP'S medical adviser 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 a seven percent permanent impairment of the right lower extremity under Table 16-3, page 509-11, of the A.M.A., *Guides*.

In an October 6, 2014 decision, OWCP vacated in part and affirmed, as modified, its prior schedule award decision on the basis that the medical evidence established a seven percent permanent impairment to the right lower extremity.

By decision dated January 16, 2015, OWCP granted appellant a schedule award for seven percent permanent impairment of the right lower extremity. The award ran for 14.4 weeks for the period May 25 through September 2, 2014. It found that appellant had previously received a schedule award for two percent, which entitled him to an additional five percent (seven percent - two percent).

LEGAL PRECEDENT

The schedule award provisions of FECA⁵ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁶ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.⁷

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).⁸ Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

⁵ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁶ See *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁷ See *J.Y.*, Docket No. 14-1807 (issued March 9, 2015); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ 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*.

⁹ A.M.A., *Guides* (6th ed. 2009), pp. 494-531.

Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹⁰

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that diagnosis-based impairment is “the primary method of calculation for the lower limb” and that most impairments are based on the diagnosis-based impairment where impairment class is determined by the diagnosis and specific criteria as adjusted by the grade modifiers for functional history, physical examination, and clinical studies. Chapter 16 further provides that alternative approaches are also provided for calculating impairment for peripheral nerve deficits, complex regional pain syndrome, amputation, and range of motion. Range of motion is primarily used as a physical examination adjustment factor and is only used to determine actual impairment values when it is not possible to otherwise define impairment.”¹¹

ANALYSIS

The Board finds that appellant has not established that he sustained more than seven percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

OWCP accepted that appellant sustained a right knee medial meniscus tear, posterior horn, and aggravation of preexisting osteoarthritis of the right knee. By decision dated July 1, 2014, it granted appellant a schedule award for two percent permanent impairment of the right lower extremity. In a decision dated January 16, 2015, OWCP granted appellant a schedule award for seven percent permanent impairment of the right lower extremity. It found that appellant had previously received a schedule award for two percent, which entitled him to an additional five percent (seven percent - two percent). The award was based on an April 14, 2014 report of Dr. Platto and the July 27, 2013 report of Dr. Slutsky, a Board-certified orthopedic surgeon serving as an OWCP medical adviser. It is appellant’s burden to submit sufficient evidence to establish the extent of permanent impairment.¹²

In his April 14, 2014 report, Dr. Platto opined that appellant had nine percent permanent impairment of the right lower extremity. He placed appellant in class 1 based on his diagnosis of meniscal injury, partial (medial and lateral meniscectomy), meniscal tear, or meniscal repair according to Table 16-3, page 509, of the A.M.A., *Guides*. Dr. Platto assigned a grade modifier of 1 for functional history due to antalgic gait, asymmetric shortened stance, favoring the right knee, AAOS score showing a mild deficit, and lack of brace or other orthotic use. He assigned a grade modifier of 3 for physical examination based on mild palpatory findings and a nine degree varus deformity found upon x-ray. Dr. Platto stated that “although there is no table in the [sixth edition of the A.M.A.,] *Guides* to rate severity of varus deformity, in the [fifth edition of the A.M.A.,] *Guides*, Table 17, p. 537, it does state that for varus deformity between 8 and 12 percent, this would be classified as severe, or grade modifier 3.” He found that a grade modifier

¹⁰ See *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹¹ A.M.A., *Guides* 497, 544-53 (6th ed. 2009).

¹² See *Annette M. Dent*, 44 ECAB 403 (1993).

of 1 for clinical studies was not applicable as appellant underwent an operation to fix his medial meniscus tear. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Platto found that (1-1) + (3-1) + (n/a) resulted in a net grade modifier of 2, equaling three percent permanent impairment of the right lower extremity.

Dr. Platto further found that a preexisting condition based upon his review of an MRI scan dated November 7, 2012 which showed evidence of moderate joint degeneration in the anterior and medial compartments. He stated that this degree of degeneration would not be expected to have occurred just two weeks after a traumatic event and opined that appellant's "preexisting arthritis here may have contributed to him developing medial meniscus tear." He noted that a weight-bearing x-ray revealed a three mm medial joint space interval. Dr. Platto placed appellant in class 1 based on his diagnosis of 3 mm cartilage interval for primary joint arthritis and determined that appellant had a default rating of seven percent permanent impairment to the right lower extremity according to Table 16-3, page 511, of the A.M.A., *Guides*. Using the net adjustment modifier of 2 based on his previously explained grade modifiers, he concluded that appellant had nine percent permanent impairment of the right lower extremity.

In accordance with its procedures, OWCP properly referred the evidence of record to its OWCP medical adviser, Dr. Slutsky, who, in his September 20, 2014 report, reviewed Dr. Platto's April 14, 2014 report and found that he did not properly apply the sixth edition of the A.M.A., *Guides*. Dr. Slutsky concurred with Dr. Platto that the most impairing diagnosis was the primary knee joint arthritis with three mm of joint space remaining and placed appellant in a class 1. He also concurred with Dr. Platto's grade modifier of 1 for functional history and his opinion that a grade modifier for clinical studies was not applicable in appellant's case. However, Dr. Slutsky explained that it was not appropriate for Dr. Platto to use the fifth edition of the A.M.A., *Guides* when he derived a grade modifier of 3 for physical examination because the sixth edition of the A.M.A., *Guides* was in effect as the time of his April 14, 2014 evaluation.¹³ He further explained that the varus was not a consistent observation and could not be used for a physical examination grade modifier because Dr. Platto used x-rays to measure the amount of varus angulation, whereas the radiologist who reviewed the same x-rays did not find a significant varus and, in fact, did not mention the varus at all. Moreover, Dr. Slutsky asserted that appellant's impairment could not be evaluated using range of motion measurements as Dr. Platto did not measure range of motion three times after a warm up and then utilize the average of the measurements as required by the A.M.A., *Guides*. As such, the range of motion method of rating impairment was not valid. For these reasons, Dr. Slutsky assigned a grade modifier of 1 for physical examination. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), the OWCP medical adviser 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 seven percent permanent impairment of the right lower extremity under Table 16-3, page 509-11, of the A.M.A., *Guides*.

¹³ See FECA Bulletin No. 09-03 (issued March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

The Board finds that OWCP's medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Platto's clinical findings. Dr. Slutsky's calculations were mathematically accurate. There is no medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides* demonstrating a greater percentage of permanent impairment. Therefore, the Board finds that OWCP properly relied on Dr. Slutsky's assessment of seven percent permanent impairment to the right lower extremity.

As the hospital records and reports from Dr. Christoforetti do not provide an impairment rating based on the sixth edition of the A.M.A., *Guides*, the Board finds that they lack probative value and are insufficient to establish appellant's claim.

On appeal counsel contends that OWCP's medical adviser disregarded appellant's preexisting condition and improperly minimized the impairment rating provided by his treating physician. Based on the findings and reasoning stated above, the Board finds counsel's arguments 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 has failed to establish more than seven percent permanent impairment of the right lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 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