

duty on October 5, 2011 when he was taking a tray of mail out of a truck. He continued to work. On December 5, 2011, however, appellant filed a claim for recurrence of disability (Form CA-2a) commencing November 28, 2011 due to the left knee condition. He claimed that he had tried to work but it got worse until he could no longer work.

OWCP advised appellant by letter dated March 20, 2012 of the evidence needed to establish his traumatic injury claim and appellant submitted medical evidence. It denied the traumatic injury claim on April 20, 2012, finding the evidence insufficient to establish his claim. Appellant requested a hearing and submitted additional evidence.

An attending physician, Dr. G. Robert Cooley, a Board-certified orthopedic surgeon, indicated in a December 5, 2011 report that a magnetic resonance imaging (MRI) scan showed bone marrow edema which could have three possible causes: avascular necrosis (AVN), contusion, or stress reaction. In a March 15, 2013 report, he noted that there was no definitive knowledge as to the cause of AVN, but the edema could be interpreted as AVN, "trauma, or just injury" and all of these started with his work-related injury.

The hearing representative, by decision dated September 20, 2012, found that appellant had established his claim for a knee strain based on evidence from Dr. Cooley, but denied the additional condition of AVN as no causal relationship had been established between the work incident and the AVN. As there was an outstanding claim for recurrence of disability, the hearing representative advised that, upon return of the case record, OWCP should initiate development of that claim.

By decision dated October 9, 2012, OWCP accepted a left knee strain.

After further develop of the claim for recurrence, OWCP denied the recurrence claim by decision dated November 29, 2012 finding the reports from Dr. Cooley insufficient to establish disability related to the accepted work incident. Appellant requested a hearing and, by decision dated May 30, 2013, the hearing representative affirmed the denial of the claim for recurrence of disability as of November 28, 2011.

Appellant filed an appeal with the Board of the May 30, 2013 decision. By decision dated December 11, 2013, the Board affirmed the denial of recurrence finding that there was no rationalized medical opinion establishing employment-related disability commencing November 28, 2011 due to the accepted condition.

In a report dated January 28, 2014, Dr. Cooley reported that appellant's left knee still gave appellant "a little bit of trouble," but his condition had been fairly stable over the last year. He noted no swelling but "a little lack of motion" (which measured 2 to 110 degrees of motion), no effusion, no laxity, and no tenderness. Dr. Cooley found the right knee at 0 to 130 degrees of motion. He diagnosed resolved left knee AVN. Dr. Cooley opined that appellant had reached maximum medical improvement (MMI), that nothing more could be done for his knee, and that he would see appellant back on an as-needed basis.

On March 14, 2014 appellant submitted a claim for schedule award (Form CA-7). By letter dated March 28, 2014, OWCP requested that appellant submit additional medical evidence with respect to a permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant

was advised that his physician should address the five listed questions in order to determine permanent impairment.

Appellant submitted a report dated April 15, 2014 from Dr. Cooley, in which he wrote that OWCP could read the range of motion findings in his earlier January 28, 2014 report which were “quite clear in black and white” and he found the percent of disability as 15 percent. He noted that it would be good if OWCP did not blame the physician “for the absurd requests on their forms.” Dr. Cooley reiterated that MMI occurred on approximately January 28, 2014.

By decision dated August 1, 2014, OWCP found the evidence insufficient to establish an employment-related permanent impairment to a scheduled member or function. It found that the reports from Dr. Cooley had not answered the specific questions needed to determine permanent impairment. As it was appellant’s burden of proof, OWCP denied the claim for a schedule award.

On August 12, 2014 appellant, through counsel, requested a hearing before an OWCP hearing representative. The hearing was held on March 10, 2015. The record was held open for additional evidence.

Appellant submitted an April 8, 2015 report from Dr. Karen Garvey, a Board-certified internist. Dr. Garvey had been requested by counsel to provide an impairment rating. She acknowledged that the accepted condition in the case was sprain of unspecified sites, knee and leg, left, and that AVN was resolved. Dr. Garvey provided a history, a thorough review of medical records, and results on examination. Current symptoms were described as difficulty with bending and squatting, pain on the left knee at 7 out of 10, no pain with walking but walking with a limp, and difficulty stretching the knee all the way. As to permanent impairment, Dr. Garvey diagnosed knee strain under Table 16-3 (knee regional grid) of the A.M.A., *Guides*. Applying the grade modifiers of 1 for functional history due to an antalgic gait, 1 for physical examination for edema of the knee, and 1 for clinical studies due to the MRI scan findings, she found a class 1 impairment or 10 percent impairment.

By decision dated May 21, 2015, the hearing representative affirmed the August 1, 2014 OWCP decision. She reviewed the reports of Dr. Cooley and Dr. Garvey but found them insufficient. The hearing representative noted that OWCP procedures provide that, in cases involving permanent impairment, the case file should be routed to an office medical adviser for an opinion concerning the nature and percentage of impairment. In this case, however, she found that such further development was not warranted. The hearing representative found that Dr. Cooley’s reports were based on the nonaccepted condition of AVN. Further, she found that, as Dr. Garvey had failed to explain what current examination findings established that the October 5, 2011 left knee strain was still active or why she attributed permanent impairment to a sprain give the objectively verified conditions of AVN and chondromalacia which were not accepted as injury related, her report was of diminished probative value and did not warrant further development. The hearing representative affirmed the August 1, 2014 decision.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the

permanent impairment of the scheduled member or function.³ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁵

Under OWCP procedures, medical evidence to support a schedule award should include a report that shows that the impairment has reached a date of MMI, describe the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability, and give a percentage of impairment under the A.M.A., *Guides*.⁶ The report should include a history of clinical presentation, physical findings, functional history, clinical studies or objective tests, analysis of findings, and the appropriate impairment based on the most significant diagnosis, as well as a discussion of how the impairment rating was calculated.⁷ If the claimant's physician provides an impairment report, the case should be referred to an OWCP medical adviser for review.⁸

ANALYSIS

In the present case, appellant submitted an April 8, 2015 report from Dr. Garvey in support of his request for a schedule award. The report provided a history, specific results on examination, and a review of medical records. Using the sixth edition of the A.M.A., *Guides*, Dr. Garvey identified Table 16-3, the knee regional grid, and provided an opinion that appellant had 10 percent left leg permanent impairment for the diagnosis of knee sprain, and applied the grade modifiers of functional history, physical examination, and clinical studies.⁹

The hearing representative acknowledged that OWCP procedures provide for routing the case file to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment,¹⁰ but in this case it found the medical reports did not warrant such a referral.

The Board has reviewed the medical evidence and finds that Dr. Garvey's report, which included a history, findings on examination, and impairment rating and an explanation as to how the impairment was calculated under the sixth edition of the A.M.A., *Guides*, was sufficient to

³ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁴ A. George Lampo, 45 ECAB 441 (1994).

⁵ FECA Bulletin No. 09-03 (March 15, 2009).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(b) (February 2013).

⁷ *Id.* at Chapter 2.808.6(a)(1).

⁸ *Id.* at Chapter 2.808.6(e).

⁹ A.M.A., *Guides* 509, Table 16-3.

¹⁰ *Supra* note 6 at Chapter 2.808.6(a) (February 2013).

warrant referral of that opinion to an OWCP medical adviser to determine an appropriate percentage of permanent impairment.¹¹ It provided a current physical examination and was probative as to permanent impairment. While it is appellant's burden of proof to establish permanent impairment, the report of Dr. Garvey is sufficiently detailed so as to warrant further development. The case will be remanded for further development in accord with OWCP procedures. After such further development as necessary, OWCP should issue an appropriate decision.

CONCLUSION

The Board finds the case is not in posture for decision and is remanded to OWCP for further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 21, 2015 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 20, 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

¹¹ *D.S.*, Docket No. 15-0606 (issued July 2, 2015); *see also John J. Carlone*, 41 ECAB 354 (1989).