

FACTUAL HISTORY

On June 26, 2012 appellant, then a 57-year-old letter carrier, was walking across a lawn when he stepped in a grass-covered hole and twisted his left knee. OWCP accepted his traumatic injury claim (Form CA-1) for left knee strain. Appellant stopped work on June 20, 2012 and received continuation of pay, followed by FECA wage-loss compensation through August 24, 2012. He returned to work on August 25, 2012 with restrictions that included using sidewalks as much as possible and no carrying in excess of 25 pounds. On or about April 5, 2013, Dr. Jared S. Levin, a Board-certified orthopedic surgeon, released appellant to resume his regular duties.

In an August 28, 2014 follow-up report, Dr. Levin advised that appellant's left knee was progressing well and that he had no significant symptoms. He noted that he was able to work and perform his daily activities. Dr. Levin reported that the range of motion (ROM) in the left knee was zero to 130 degrees without effusion or instability. He also reported that there was neutral alignment of the left lower extremity and that the left knee was stable to varus, valgus stress, Lachman and posterior drawer, with no tenderness. Dr. Levin found that appellant had reached maximum medical improvement (MMI) with regard to his left knee.

On October 20, 2014 appellant filed a claim for a schedule award (Form CA-7).

On November 12, 2014 OWCP informed appellant that it required additional medical evidence in order to determine whether he was entitled to a schedule award for his accepted left knee strain. It advised him to submit an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (hereinafter A.M.A., *Guides*). OWCP afforded appellant 30 days to submit the requested information. However, it did not receive any additional medical evidence within the allotted time frame.

By decision dated December 12, 2014, OWCP denied appellant's claim for a schedule award.

On December 19, 2014 counsel timely requested a hearing before a representative of OWCP's Branch of Hearings and Review.

Counsel subsequently submitted a March 12, 2015 impairment rating from Dr. Catherine E. Watkins Campbell, who found seven percent left lower extremity permanent impairment under Table 16-3, Knee Regional Grid, A.M.A., *Guides* 509 (6th ed. 2009).³ Dr. Watkins Campbell based the impairment rating on a diagnosis of knee sprain (muscle/tendon) with mild motion deficits (class 1/Class of Diagnosis (CDX)).⁴ Dr. Watkins Campbell assigned a Functional History grade modifier (GMFH) of 1 and calculated

³ Dr. Watkins Campbell is Board-certified in both family medicine and occupational medicine.

⁴ On physical examination, Dr. Watkins Campbell reported a maximum range of motion of -2 degrees extension and 106 degrees flexion. She also noted that appellant ambulated with a normal gait, and could perform only a limited squat. There was also no evidence of left knee laxity, localized tenderness, or crepitation.

a net adjustment of 0.⁵ Therefore, appellant's class 1 impairment rating remained at the default (C) grade of seven percent.

By decision dated June 9, 2015, the hearing representative set aside OWCP's December 12, 2014 decision and remanded the case for further medical development. The hearing representative instructed OWCP to refer the case record, including Dr. Watkins Campbell's March 12, 2015 impairment rating to the district medical adviser (DMA) for review.⁶

In a July 3, 2015 report, Dr. Morley Slutsky, the DMA, reviewed appellant's file, including Dr. Watkins Campbell's March 12, 2015 report and found there was no evidence to support an impairment under the A.M.A., *Guides* (6th ed. 2009).⁷ He noted that when appellant reached MMI in August 2014, Dr. Levin reported a normal left knee examination, normal range of motion (ROM), and that there were no significant left knee symptoms. Dr. Slutsky further noted that in August 2014 appellant was able to perform activities of daily living without difficulty. He opined that these earlier findings contradicted Dr. Watkins Campbell's March 12, 2015 examination results. Consequently, Dr. Slutsky disagreed with her diagnosis of a soft tissue muscle/tendon problem with mild motion deficits. He explained that there was no diagnostic evidence to support underlying soft tissue pathology. Based on Dr. Levin's August 2014 left knee ROM measurements (0 to 130° flexion), Dr. Slutsky found zero (0) percent left lower extremity permanent impairment under Table 16-23 and Table 16-25, A.M.A., *Guides* 549-50 (6th ed. 2009).

By decision dated September 16, 2015, OWCP relied on Dr. Slutsky's July 3, 2015 report and found no permanent impairment of the left lower extremity.

Counsel timely requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 17, 2016. He did not submit any additional medical evidence, but argued, among other things, that Dr. Slutsky, the DMA, was neither fair nor impartial.

In a July 29, 2016 decision, OWCP's hearing representative affirmed the September 16, 2015 decision. She found that Dr. Watkins Campbell had not presented any true evidence to support permanent impairment, and that her findings were inconsistent with the medical evidence of record. Consequently, the hearing representative deferred to Dr. Slutsky's July 3, 2015 opinion.

⁵ Dr. Watkins Campbell's net adjustment calculation did not include grade modifiers for Physical Examination (GMPE) or Clinical Studies (GMCS). Net Adjustment = (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). See section 16.3d, A.M.A., *Guides* 521 (6th ed. 2009).

⁶ The Federal (FECA) Procedure Manual provides in relevant part: "If the claimant's physician provides an impairment report ... the case should be referred to the DMA for review." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6e (February 2013). The procedure manual further provides that "[a]fter obtaining all necessary medical evidence, the file should be routed to the DMA for opinion concerning the nature and percentage of impairment." *Id.* at Chapter 2.808.6f.

⁷ Dr. Slutsky is Board-certified in occupational medicine.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁸ 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁹ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).¹⁰

ANALYSIS

OWCP accepted appellant's traumatic injury claim for left knee strain. Dr. Watkins Campbell examined appellant on March 12, 2015 and found seven percent left lower extremity permanent impairment under Table 16-3, A.M.A., *Guides* 509 (6th ed. 2009). Dr. Slutsky, the DMA, reviewed the case record, including Dr. Watkins Campbell's report and found that appellant had no permanent impairment under the A.M.A., *Guides*. He noted that appellant showed no significant left knee symptoms when evaluated by Dr. Levin in August 2014. Dr. Slutsky further noted that appellant's August 2014 examination revealed a normal left knee with normal ROM measurements. Lastly, at the time appellant was said to have reached MMI (August 2014), he was noted to have been able to perform his activities of daily living without difficulty. In light of the prior normal examination findings, Dr. Slutsky questioned the validity of Dr. Watkins Campbell's March 12, 2015 diagnosis of a left knee soft tissue muscle/tendon problem with mild motion deficits. He explained that there was no diagnostic evidence to support underlying soft tissue pathology. Thus, the DMA relied upon Dr. Levin's August 2014 examination findings to determine the extent of any left lower extremity permanent impairment. Based upon the reported knee ROM measurements, Dr. Slutsky found that appellant had zero percent left lower extremity permanent impairment under Table 16-23 and Table 16-25, A.M.A., *Guides* 549-50 (6th ed. 2009).

Dr. Watkins Campbell's March 12, 2015 left lower extremity impairment rating appears to have been based on appellant's subjective complaints of pain and his self-reported functional limitations, in conjunction with left knee ROM deficits. Dr. Slutsky reasonably questioned the reliability of Dr. Watkins Campbell's impairment rating because there was no diagnostic evidence to support underlying soft tissue pathology, as well as the fact that the most recent prior examination findings were essentially normal. Moreover, the Board notes that

⁸ 5 U.S.C. § 8107(c). For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

⁹ 20 C.F.R. § 10.404.

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

Dr. Watkins Campbell failed to explain how her March 12, 2015 diagnosis and/or findings were attributable to the accepted left knee injury.¹¹

Appellant submitted no additional impairment evaluations or ratings. As he failed to provide a rating in accordance with the applicable protocols and tables of the A.M.A., *Guides*, OWCP properly found that appellant had no ratable impairment attributable to his accepted left knee condition, and therefore, was not entitled to a schedule award. Accordingly, the Board will affirm the July 29, 2016 decision.

Appellant may request a schedule award or increased schedule award at any time 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 permanent impairment of the left lower extremity, warranting a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2017
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 See *Veronica Williams*, 56 ECAB 367, 370 (2005).