



compensation. Appellant sought treatment with Dr. John K. Konkel, a Board-certified orthopedic surgeon.

In a January 12, 2016 diagnostic report, Dr. Bradley Ferguson, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan of the left knee revealed medial meniscus tear, moderate-to-high-grade chondromalacia in the medial compartment, mild chondral heterogeneity in the lateral tibial plateau, mild grade 2 chondromalacia in the medial trochlea, and focal edema in the distal lateral prefemoral fat pad.

By decision dated January 28, 2016, OWCP accepted the claim for left knee tear of medial meniscus.

On February 2, 2016 appellant underwent a left knee arthroscopy with arthroscopic medial meniscectomy performed by Dr. Konkel. The surgery was approved by OWCP.

In a March 25, 2016 work status note, Dr. Konkel released appellant to work with no restrictions on March 10, 2016. He diagnosed left acute medial meniscal tear.

On April 7, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated May 10, 2016, OWCP requested Dr. Konkel submit a report addressing appellant's work-related conditions, the date of maximum medical improvement (MMI), objective findings, subjective complaints, and an impairment rating rendered according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6<sup>th</sup> ed. 2009).<sup>2</sup>

In a May 18, 2016 medical report, Dr. Konkel reported that a January 12, 2016 MRI scan of appellant's left knee had revealed a torn medial meniscus. He reiterated that on February 2, 2016 appellant had undergone arthroscopy of his left knee with partial meniscectomy. Dr. Konkel reported that the arthroscopy revealed a torn medial meniscus, degenerative changes, and chondromalacia. Utilizing page 525 of the sixth edition of the A.M.A., *Guides*, he determined that appellant had five percent permanent impairment of the left lower extremity for a meniscal tear. Dr. Konkel reported that this impairment rating was based on appellant's meniscectomy, meniscal injury, and residual chondromalacia.

OWCP routed Dr. Konkel's report, a statement of accepted facts, and the case file to Dr. Jovito Estaris, Board-certified in occupational medicine serving as an OWCP district medical adviser (DMA), for review and a determination on whether appellant sustained permanent partial impairment of the left lower extremity and date of MMI.

In a December 16, 2016 report, Dr. Estaris reported that appellant's record was reviewed for the purpose of determining permanent impairment of the left lower extremity due to a left knee tear of medial meniscus. He noted that on February 2, 2016 appellant had undergone a left knee arthroscopy and partial medial meniscectomy. Dr. Estaris reported the date of MMI as May 18, 2016, the date of Dr. Konkel's impairment rating.

---

<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

According to Table 16-3 (Knee Regional Grid) on page 509, Dr. Estaris identified meniscal injury as the diagnosis-based impairment (DBI), class 1 with a default value of two percent for partial medial meniscectomy. He noted that there was no available data to perform grading for functional history or physical examination. Dr. Estaris further reported that clinical studies could not be used in the adjustment as the MRI scan showed a medial meniscus tear and was used in classifying the DBI. As there were no adjustments, he determined that appellant remained in class 1, grade C for two percent permanent impairment of the left lower extremity. Dr. Estaris noted that Dr. Konkel failed to provide detailed calculations to compare the differences in the ratings. He speculated that Dr. Konkel added three percent impairment for chondromalacia of the joint, yet noted that this was not acceptable in accordance with the A.M.A., *Guides*. Dr. Estaris further reported that Dr. Konkel's impairment rating was deficient with no accompanying history or physical examination at the time of the impairment rating. He noted that Dr. Konkel referenced page 525 of the A.M.A., *Guides* yet this only provided an example of a meniscus tear and how it was rated.

By decision dated January 19, 2017, OWCP granted two percent permanent impairment of the left lower extremity. It found that the weight of the medical evidence rested with Dr. Estaris serving as OWCP's DMA. The date of MMI was noted as May 18, 2016. The award covered a period of 5.76 weeks from May 18 to June 27, 2016.

### **LEGAL PRECEDENT**

The schedule award provision of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body.<sup>3</sup> However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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. For decisions issued after May 1, 2009, the sixth edition will be applied.<sup>4</sup>

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health. For lower extremity impairments, the evaluator identifies the impairment class for the diagnosed condition be Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).<sup>5</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>6</sup>

---

<sup>3</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

<sup>4</sup> 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).

<sup>5</sup> *Supra* note 2 at 493-531.

<sup>6</sup> *Id.* at 521.

Evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>7</sup>

### ANALYSIS

OWCP accepted appellant's claim for left knee tear of medial meniscus. It approved surgery for a left knee arthroscopy and partial medial meniscectomy, which he underwent on February 2, 2016. The issue is whether appellant has more than two percent permanent impairment of the left lower extremity, for which he previously received a schedule award.

The Board finds that appellant has not established more than two percent permanent impairment of the left lower extremity.

In his May 18, 2016 report, appellant's treating physician, Dr. Konkel, reported that appellant sustained five percent permanent impairment of the left lower extremity due to his meniscectomy, meniscal injury, and residual chondromalacia. His report did not provide functional history or physical examination findings, nor did he identify any grade modifiers to explain how he reached his calculation. It is well established that a physician's opinion should include a description of impairment, range of motion of affected members, any atrophy or deformity, decreases in strength or disturbance of sensation in sufficient detail so as those reviewing the file would be able to clearly visualize the impairment with all its limitations.<sup>8</sup> Thus, Dr. Konkel's report is of limited probative value and insufficient to determine the extent of permanent impairment.<sup>9</sup>

In a report dated December 16, 2016, Dr. Estaris, serving as OWCP's DMA, reviewed Dr. Konkel's report and determined that appellant had two percent permanent impairment of the left lower extremity. According to Table 16-3 (Knee Regional Grid), he identified meniscal injury, class 1 with a default value of two percent for partial medial meniscectomy.<sup>10</sup>

Dr. Estaris noted that there was no adjustment in the impairment rating because there was no available data to perform grading for functional history or physical examination, and clinical studies did not apply as the MRI scan was used to identify the class. He deferred to a default impairment rating for a meniscal injury by failing to assign grade modifiers for functional history, physical examination, and clinical studies. Dr. Estaris explained that the impairment had not been properly described by appellant's physician.

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and

---

<sup>7</sup> *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>8</sup> See *Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>9</sup> *T.E.*, Docket No. 11-1805 (issued August 2, 2012).

<sup>10</sup> *Supra* note 2 at 509.

percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>11</sup>

Dr. Estaris properly explained how he calculated appellant's permanent impairment, given the limited data available. He considered all the reported findings, as well as appellant's partial medial meniscectomy, and gave a sufficient and supportive explanation for his determination that appellant had two percent permanent impairment of the left lower extremity. The weight of the medical opinion evidence on this matter rests with Dr. Estaris, OWCP's medical adviser.<sup>12</sup>

Appellant may request a schedule award or increased schedule award at any time based on evidence of 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 two percent permanent impairment of his left lower extremity for which he received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>11</sup> See *supra* note 4 at Chapter 2.808.6(f) (March 2017).

<sup>12</sup> *L.J.*, Docket No. 17-0754 (issued June 21, 2017).