

ISSUE

The issue is whether appellant has met his burden of proof to establish more than 34 percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts of the case as set forth in the Board's prior decisions are incorporated herein by reference. The facts relevant to this case history are set forth below. Appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he strained his right knee in the performance of duty on June 4, 2002. Appellant asserted that when he went to pick up a dropped letter his right knee locked up. OWCP accepted the claim for a right knee sprain and medial meniscus tear on August 26, 2002. Appellant underwent authorized right knee surgery on September 24, 2002 that included a partial medial meniscectomy.

Appellant filed a claim for a schedule award (Form CA-7). Thereafter, by decision dated March 15, 2006, OWCP issued a schedule award for eight percent permanent impairment of the right leg. The March 15, 2006 decision was vacated on September 28, 2006, and by decision dated October 3, 2006, OWCP issued a schedule award for nine percent permanent impairment of the right lower extremity. Using the diagnosis-based impairment (DBI) methodology, the permanent impairment was based on the diagnosis of reduced cartilage interval in the right knee and meniscectomy surgery. By decision dated May 4, 2007, the Board affirmed the October 3, 2006 decision.⁴

On April 16, 2012 appellant underwent arthroscopic surgery on the right knee, performed by Dr. Jon Tucker, a Board-certified orthopedic surgeon. He began receiving compensation for wage loss as of April 16, 2012. On July 30, 2012 appellant underwent right knee patellofemoral joint replacement surgery. He later underwent additional right knee surgery on August 22, 2012. Appellant returned to light-duty work on July 26, 2013.

In a report dated June 4, 2013, Dr. Tucker provided results on examination which indicated that range of motion (ROM) of the knee was 0 to 100 degrees. In a report dated July 9, 2013, he again provided results on examination. Dr. Tucker noted 0 to 90 degrees active ROM in the right knee, with palpable crepitus at about 30 degrees of flexion in the patellofemoral joint.

By report dated October 11, 2013, Dr. Michael Platto, a Board-certified physiatrist, provided a history and results on examination. For the right knee, he reported that ROM was 0 to 102, 105, and 106 degrees on successive trials, with extension of 0 to -18, -16, and -15

³ Docket No. 07-0082 (issued May 4, 2007). In Docket No. 14-1133 (issued September 22, 2014), the Board reviewed an April 9, 2014 OWCP decision with respect to an overpayment of \$3,456.72 which was created because appellant received compensation after a return to work on July 26, 2013. As the issue on current appeal is an increased schedule award, the Board will not review facts relevant to the overpayment issue. *See also* Docket No. 14-1077 (issued July 2, 2015).

⁴ Docket No. 07-0082 (issued May 4, 2007).

degrees. With regard to permanent impairment, Dr. Platto identified Table 16-3 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵ Using the DBI method, he noted that there was no provision for a partial knee replacement, and therefore he would use the diagnostic criteria of total knee replacement. Dr. Platto indicated that appellant was a class 4 impairment, as he had a poor result with moderate motion deficit of 15 degrees. As to the adjustment from the default value (67 percent leg impairment), he found that, based on a functional history grade modifier 2, appellant had a -2 grade adjustment or 59 percent permanent impairment of the right lower extremity.

In a report dated March 22, 2014, OWCP's medical adviser reviewed the case record. Using the DBI method and a diagnosis of total knee replacement, he related that under Table 16-3 of the A.M.A., *Guides*, he would rate appellant's right knee as class 3 impairment for "fair result." The medical adviser explained that the medical evidence showed mild ROM deficit, rather than the moderate found by Dr. Platto. The default (grade C) impairment therefore was 37 percent, and with a net grade adjustment of minus 2, the leg impairment was 31 percent. The medical adviser opined that the date of maximum medical improvement (MMI) was June 4, 2013, as appellant's right knee condition had stabilized at that time.

OWCP issued a schedule award decision dated April 1, 2014, for an additional 22 percent permanent impairment of the right lower extremity. The period of the award was 63.36 weeks commencing August 25, 2013. Appellant filed an appeal from this decision to the Board.

On appeal, the Board found that under 5 U.S.C. § 8123(a) a conflict existed between OWCP's medical adviser and Dr. Platto as to a proper impairment rating.⁶ The case was remanded to OWCP for proper resolution of the conflict.

Dr. Victor Thomas, a Board-certified orthopedic surgeon, was selected as the independent medical adviser. In a report dated November 28, 2015, he provided a history and results on examination. Dr. Thomas used the DBI method and a diagnosis of total knee replacement. He reported 5 to 110 degrees of flexion in the right knee. As to permanent impairment, Dr. Thomas found that under Table 16-3 appellant had class 2 impairment for a "good result" (good position, stable, functional), but also had moderate loss of motion, which was class 4 criteria. He found that appellant was therefore class 3, fair result, with a default (grade C) impairment of 37 percent. Dr. Thomas determined that applying the adjustment formula appellant had grade B, 34 percent right leg permanent impairment.

In a report dated January 10, 2016, an OWCP medical adviser reviewed the record and opined that, under the DBI method and a diagnosis of total knee replacement, appellant had 31 percent impairment under Table 16-3 of the A.M.A., *Guides*, for class 3, grade A right leg impairment based on total knee replacement. On February 9, 2016 OWCP requested that a second medical adviser review the evidence, as the medical adviser's count did not resolve a medical conflict. By report dated February 10, 2016, Dr. Michael Katz, OWCP's medical

⁵ A.M.A. *Guides* (6th ed. 2009).

⁶ Docket No. 14-1077 (issued July 2, 2015).

adviser, opined that Dr. Thomas had properly applied the A.M.A., *Guides* and agreed with the 34 percent permanent impairment rating.

By decision dated March 30, 2016, OWCP issued a schedule award for an additional three percent. The period of the award was 8.64 weeks from November 23, 2015.

On June 27, 2016 appellant submitted a new report from Dr. Platto dated June 13, 2016. Dr. Platto reported appellant's physical examination findings for the right knee as 105 degrees of flexion and that appellant lacked 10 degrees of extension, based on the use of a goniometer. He again opined that appellant had 59 percent permanent impairment of the right lower extremity, based on class 4, grade A for total knee replacement. Dr. Platto noted that the ROM methodology could be used alone, but this was not the preferred method. Therefore, using the DBI method, he found 10 percent permanent impairment for flexion and 30 percent permanent impairment for flexion contracture. Appellant submitted a letter dated August 13, 2016, confirming that Dr. Platto had used a goniometer to measure ROM, while Dr. Thomas had estimated the loss of motion.

In a September 15, 2016 memorandum, OWCP requested that Dr. Katz review the evidence from Dr. Thomas and Dr. Platto with regard to the requirements found in the A.M.A., *Guides* for measuring ROM and provide his opinion as to whether or not ROM based on a goniometer was necessary as an objective measuring tool to determine an impairment rating. It also requested Dr. Katz to elaborate further as to Dr. Thomas' use of the DBI method for total knee replacement as opposed to the ROM impairment method. Finally, OWCP requested that Dr. Katz review Dr. Platto's June 13, 2016 report, and explain the differences and points of disagreement between the ratings.

In a report dated September 19, 2016, Dr. Katz wrote that the findings of Dr. Thomas as to ROM of appellant's right knee would qualify for a mild impairment based on extension, with no impairment for flexion. He opined that he had "no reason to conclude that Dr. Thomas performed inaccurate measurements of motion any more than to conclude that Dr. Platto's measurements were "more accurate." Dr. Katz further wrote that, based on Dr. Thomas' findings, appellant met the qualifications for a class 3 impairment with mild motion deficit. He noted the DBI method was preferred, and opined that Dr. Thomas had properly found 34 percent right leg permanent impairment using the DBI method.

By decision dated October 4, 2016, OWCP found appellant had not met his burden of proof to establish more than 34 percent right leg permanent impairment.

LEGAL PRECEDENT

Section 8107 of FECA 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.⁷ Neither FECA nor the

⁷ 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).

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.⁸ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁹

With respect to a knee impairment, the A.M.A., *Guides* provides a regional grid at Table 16-3. The Class of Diagnosis (CDX) is determined based on specific diagnosis, and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for Functional History (GMFH) Table 16-6, Physical Examination (GMPE) Table 16-7, and Clinical Studies (GMCS) Table 16-8. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰

ANALYSIS

The issue is whether appellant has more than 34 percent permanent impairment of the right lower extremity, for which he previously received schedule awards. On a prior appeal, the Board found a conflict in the medical evidence under 5 U.S.C. § 8123(a) as to the proper impairment rating for the right knee. Appellant was referred to Dr. Thomas as an independent medical adviser to resolve the conflict of medical opinion between Dr. Platto and the district medical adviser. Based on Dr. Thomas' November 28, 2015 independent medical report, which was found to warrant the special weight of the evidence, OWCP issued a March 30, 2016 schedule award decision for a total of 34 percent permanent impairment.

Appellant requested reconsideration following the March 30, 2016 decision and in support thereof he submitted a June 13, 2016 report from Dr. Platto again finding 59 percent permanent impairment of the right lower extremity using the DBI method, under Table 16-3. He confirmed his use of a goniometer to perform his physical examination, noting that Dr. Thomas had merely estimated loss of motion to determine a "fair result" under the DBI methodology. The Board finds that Dr. Platto's June 13, 2016 medical report is insufficient to overcome the special weight afforded to the independent medical examination opinion of Dr. Thomas as he provides no new objective findings on which to establish a greater rating of permanent impairment and because his opinion is repetitive of his prior medical opinion and rationale.¹¹ Furthermore, as Dr. Platto was on one side of the conflict that Dr. Thomas resolved, the additional report from Dr. Platto is insufficient to overcome the special weight accorded Dr. Thomas' report as the impartial medical specialist or to create a new conflict.¹²

⁸ A. George Lampo, 45 ECAB 441 (1994).

⁹ FECA Bulletin No. 09-03 (March 15, 2009).

¹⁰ The net adjustment is up to +2 (grade E) or -2 (grade A).

¹¹ M.P., Docket No. 17-0459 (issued July 12, 2017).

¹² Dorothy Sidwell, 41 ECAB 857, 874 (1990).

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 not met his burden of proof to establish more than 34 percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 4, 2016 is affirmed.¹³

Issued: December 15, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

¹³ Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.