

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Milwaukee, WI, Employer**

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**Docket No. 17-0600  
Issued: July 5, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 23, 2017 appellant filed a timely appeal from a November 29, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has established more than two percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

**FACTUAL HISTORY**

On September 24, 2015 appellant, then a 51-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on that date he twisted his left knee while unloading a trailer. On October 28, 2015 OWCP accepted appellant's claim for unspecified tear

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

of unspecific meniscus left knee. The record indicates that appellant stopped work on October 31, 2015.

On December 2, 2015 appellant underwent surgery performed by Dr. Paul J. Sienkiewicz, a Board-certified orthopedic surgeon. Dr. Sienkiewicz listed the procedure as “arthroscopy with medial meniscectomy.” He noted mild synovitis throughout the knee with a small clear serous effusion. Dr. Sienkiewicz noted mild degenerative changes in all three compartments, but saw no exposed bone or large flaking off pieces. He noted that the anterior cruciate ligament and the posterior cruciate ligament were intact, that the patella tracked normally, and ligaments were stable in all directions. Dr. Sienkiewicz noted a flap tear of the posterior horn of the medial meniscus.

Appellant returned to full-duty work on January 16, 2016.

On June 14, 2016 appellant filed a claim for a schedule award (Form CA-7). In support of his claim, he submitted a May 24, 2016 progress report wherein Dr. Sienkiewicz indicated that appellant’s left knee had healed following the medial meniscectomy and that he reached an end point of healing with no recent change and no expected change in the immediate future. Appellant noted that he was six months post left knee arthroscopy with meniscectomy for work-related meniscus tear. Dr. Sienkiewicz reported that appellant had returned to full-duty work and was doing well, although he had a few knee symptoms, including a slight feeling of looseness and occasional medial pain. He noted that appellant walked with no limp and had knee motion of 0 to 125 degrees on the left and 130 degrees on the right. Dr. Sienkiewicz further noted no effusion, very minimal medial joint space tenderness, and stable ligaments. He opined that appellant had five percent permanent impairment of the left knee related to residual symptoms including a slight loss of range of motion, some difficulty squatting, and the loss of the meniscal cartilage.

By letter dated June 28, 2016, OWCP asked Dr. Sienkiewicz to provide an impairment rating utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> edition 2009) (hereinafter A.M.A., *Guides*).

In a July 12, 2016 note, Dr. Sienkiewicz indicated that appellant had reached maximum medical improvement as of the date of his last visit on May 23, 2016. He indicated that appellant had five percent permanent impairment of the left knee due to the employment-related injury of September 24, 2015. Dr. Sienkiewicz noted that elements of impairment included pain, weakness, stiffness, and loss of meniscal tissue due to a meniscal tear.

By memorandum dated September 24, 2015, OWCP requested that a district medical adviser evaluate appellant’s claim under the A.M.A., *Guides* with regard to impairment to his left lower extremity. In an October 18, 2016 response, the medical adviser opined that appellant had two percent permanent impairment of the left lower extremity pursuant to the A.M.A., *Guides*, Table 16-3, page 509. He noted that, although the operative report of December 2, 2015 listed the procedure as an arthroscopy with medial meniscectomy, the body of the report clearly indicated that appellant only underwent a partial medial meniscectomy.

By decision dated November 29, 2016, OWCP issued a schedule award for two percent permanent impairment of the left lower extremity.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> and its implementing regulations<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss, or loss of use, of scheduled members or functions of the body. 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 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.<sup>4</sup> The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.<sup>5</sup>

The sixth edition requires identifying the impairment class for the diagnosed condition Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).<sup>6</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>7</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.<sup>8</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for tear of unspecified meniscus left knee. It issued a schedule award for two percent permanent impairment of the left lower extremity based on the opinion of OWCP's medical adviser.

The Board finds that the case is not in posture for decision.

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Id.*

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

<sup>6</sup> A.M.A., *Guides* 494-531.

<sup>7</sup> *Id.* at 521.

<sup>8</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

Appellant's treating physician, Dr. Sienkiewicz, found that appellant had five percent permanent impairment of the left lower extremity. With regard to knee impairment, the A.M.A., *Guides* provides a regional grid at Table 16-3.<sup>9</sup> Dr. Sienkiewicz did not reference this table in reaching his conclusion, nor did he make any other reference to the A.M.A., *Guides*. A physician must support his impairment rating by specifically referencing tables or other provisions of the A.M.A., *Guides* and explaining the application of the provisions.<sup>10</sup> As Dr. Sienkiewicz did not properly apply the A.M.A., *Guides*, his opinion on permanent impairment is of diminished probative value.<sup>11</sup>

Consistent with its procedures,<sup>12</sup> OWCP properly referred the matter to a district medical adviser for an opinion regarding appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*. In an October 18, 2016 opinion, the medical adviser indicated that appellant had two percent permanent impairment of his left lower extremity. In reaching this conclusion, he applied Table 16-3 of the A.M.A., *Guides*. Pursuant to Table 16-3, when evaluating meniscal injury, different figures are applied depending on whether appellant underwent a partial meniscectomy or a total meniscectomy. The medical adviser indicated that, although Dr. Sienkiewicz's operative report of December 2, 2015 noted that he had conducted an arthroscopy with medial meniscectomy, the body of the operative report indicated that he only conducted a partial medial meniscectomy. There is no rationale or explanation for this conclusion as he did not explain how or why the operative report confirmed that the surgery performed was limited to a partial medial meniscectomy.

The Board also finds that while the medical adviser concluded that appellant had two percent permanent impairment of the left lower extremity pursuant to Table 16-3 of the A.M.A., *Guides*, he also failed to note and apply grade modifiers as required by the A.M.A., *Guides*.<sup>13</sup> On remand the medical adviser must also explain how the grade modifiers apply to arrive at appellant's impairment rating. If the medical adviser determines that a second opinion evaluation is necessary, OWCP shall refer appellant for a second opinion evaluation.<sup>14</sup>

The case will be remanded for OWCP to ask the medical adviser for clarification of his opinion, as previously discussed. After such further development as is deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>9</sup> A.M.A., *Guides* 509, Table 16-3; *see also* S.H., Docket No. 17-0174 (issued May 8, 2017).

<sup>10</sup> T.M., Docket No. 15-1477 (issued October 22, 2015).

<sup>11</sup> D.M., Docket No. 16-1166 (issued October 25, 2016).

<sup>12</sup> *Supra* note 8.

<sup>13</sup> *See* Section 16.3, A.M.A., *Guides* 515-30.

<sup>14</sup> *Supra* note 8 at Chapter 2.810.9(b)(6) (June 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 29, 2016 is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: July 5, 2017  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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