

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

S.H., Appellant)	
)	
and)	Docket No. 17-0703
)	Issued: May 23, 2017
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Richmond, VA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 7, 2017 appellant filed a timely appeal from an October 20, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she has more than three percent permanent impairment of the right leg for which she previously received a schedule award.

FACTUAL HISTORY

On January 27, 2016 appellant, then a 49-year-old tax examination technician, filed a traumatic injury claim (Form CA-1) alleging that on January 25, 2016 she fractured her right

¹ 5 U.S.C. § 8101 *et seq.*

knee in the performance of duty.² She stopped work on January 25, 2016. OWCP accepted the claim for a tear of the right lateral meniscus.

On March 9, 2016 Dr. Kevin E. Coates, a Board-certified orthopedic surgeon, performed a right knee arthroscopy with loose body excision. He found an intact posterior and anterior cruciate ligament and medial meniscus, no “articular lesions of the lateral compartment or the lateral meniscus,” and grade 3 chondromalacia of the medial femoral condyle.

Appellant returned to modified full-time employment on April 4, 2016 and to regular full-duty employment on June 3, 2016. On July 26, 2016 she filed a claim for a schedule award (Form CA-7).

In a July 11, 2016 impairment evaluation, Dr. Coates opined that appellant reached maximum medical improvement (MMI) on July 1, 2016 following surgery to remove a loose body in the patellofemoral joint. On examination he found a trace of effusion in the right knee, but with full strength. Dr. Coates measured 120 degrees flexion and zero degrees extension of the right knee. Citing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ he identified the diagnosis as patellofemoral arthritis using Table 16-3 on page 511, noting that there was no diagnosis provided for a loose body. Dr. Coates applied a grade modifier of one for functional history, physical examination, and clinical studies, which yielded a net adjustment of zero from the default value of three percent.

An OWCP medical adviser reviewed the record on September 15, 2016 and concurred with the impairment rating of Dr. Coates.

By decision dated October 20, 2016, OWCP granted appellant a schedule award for three percent permanent impairment of the right leg. The period of the award ran for 8.64 weeks from July 11 to September 9, 2016.

On appeal appellant contends that due to multiple incisions from her right knee surgery she can no longer get down on that knee. She requests a greater award due to her pain and limitations on daily activities.

LEGAL PRECEDENT

The schedule award provision of FECA,⁴ and its implementing federal regulations,⁵ 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For

² At the time of her injury, appellant was walking through a module to the cafeteria to get breakfast. Her injury occurred at 7:30 a.m. and her duty hours were from 6:00 a.m. to 2:30 p.m.

³ A.M.A., *Guides* (6th ed. 2009).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

The sixth edition requires identifying the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁸ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

ANALYSIS

OWCP accepted that appellant sustained a tear of the right lateral meniscus due to a January 25, 2016 employment injury. Dr. Coates performed a loose body excision on March 9, 2016. He indicated that the anterior and posterior cruciate ligament and medial meniscus were intact and that there were no articular lesions of the lateral meniscus or lateral compartment. Dr. Coates found grade 3 chondromalacia.

In an impairment evaluation dated July 11, 2016, Dr. Coates opined that appellant had reached MMI after her surgery to remove a loose body in the patellofemoral joint. He measured range of motion and found no loss of strength and minimal effusion of the right knee. Dr. Coates, using the knee regional grid set forth at Table 16-3 on page 511 of the A.M.A., *Guides*, identified the diagnosis as class 1 patellofemoral arthritis as there was no provision in the grid for the diagnosis of a loose body. The A.M.A., *Guides* provides that, if “a specific diagnosis is not listed in the diagnosis-based impairment grid, the examiner should identify a similar listed condition to be used as a guide to the impairment calculation.”⁹ Dr. Coates applied grade modifiers of one for functional history, physical examination, and clinical studies, to find no adjustment from the default value of three percent.¹⁰ An OWCP medical adviser reviewed Dr. Coates’ opinion and concurred with his impairment rating. There is no medical evidence showing greater impairment.

On appeal appellant argues that the schedule award is inadequate as she can no longer get down on her knee due to her pain and limitations. Under the schedule, Congress has defined the number of weeks of compensation payable for loss of use of a member.¹¹ For 100 percent impairment, or total loss of use, of a leg, FECA provides 288 weeks of compensation.¹² As

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* 494-531.

⁹ *Id.* at 499.

¹⁰ Utilizing the net adjustment formula discussed above, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (1-1) + (1-1) + (1-1) = 0, yielded a zero adjustment.

¹¹ 5 U.S.C. § 8107.

¹² *Id.* at § 8107(c)(2).

explained, appellant has three percent impairment of the right leg which would equate to 8.64 weeks of compensation. Factors such as limitations on daily activities or recreational activities do not go into the determination of impairment under a schedule award.¹³ The record does not contain any medical evidence to establish greater impairment in accordance with the sixth edition of the A.M.A., *Guides*. Appellant thus has not established that she sustained more than three percent impairment of the right lower extremity.¹⁴

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 that she has more than three percent permanent impairment of the right leg for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ See *E.L.*, 59 ECAB 405 (2008); *Dennis R. Stark*, 57 ECAB 306 (2006).

¹⁴ See generally *C.I.*, Docket No. 15-1320 (issued December 15, 2015).