



## ISSUE

The issue is whether appellant has established employment-related permanent impairment of a scheduled member, warranting a schedule award.

## FACTUAL HISTORY

On March 26, 2014 appellant, then a 53-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her left knee when she hyperextended while tripping over tubs of mail. She stopped work on March 26, 2014. OWCP accepted the claim for left knee sprain of unspecified sites. It paid wage-loss compensation on the supplemental rolls for intermittent disability commencing May 3, 2014.

On November 21, 2014 OWCP referred appellant to Dr. Paul C. Collins, a Board-certified orthopedist, for a second opinion evaluation to determine whether appellant had residuals of the accepted condition. In a report dated December 17, 2014, Dr. Collins reviewed appellant's medical records and conducted a physical examination. Physical examination findings included intact and equal bilateral lower extremity sensation, multiple bilateral knee arthroscopic portals, and decreased right knee diameter. Dr. Collins diagnoses included progressive osteoarthritis of the spine, bilateral knee, and hips. With respect to her accepted left knee sprain, he opined that it had resolved. Dr. Collins attributed appellant's current symptoms to her preexisting conditions of obesity and significant right knee degenerative arthritis. He concluded that appellant had recovered from her accepted left knee sprain and no additional medical treatment was required for that condition. Dr. Collins opined that appellant suffered a temporary aggravation of her preexisting underlying progressive degenerative arthritis which had resolved as she was back to her preexisting state.

On January 21, 2015 OWCP issued a notice of proposed termination of compensation and medical benefits, finding that Dr. Collins' December 30, 2014 report established no residuals of the work-related condition. In a March 10, 2015 decision, it terminated appellant's compensation benefits, effective March 9, 2015, as the weight of the medical evidence established that appellant had no continuing disability or residuals of her accepted employment injury.

Subsequent to the March 10, 2015 decision terminating her compensation benefits, OWCP received medical reports from Dr. Miers Johnson, a treating Board-certified orthopedic surgeon, covering the period June 16, 2014 to October 1, 2015. Dr. Johnson noted an injury date of March 26, 2014, provided examination findings, and diagnosed knee pain, bilateral knee osteoarthritis, and left leg osteoarthritis.

Appellant, through counsel, requested an oral hearing before an OWCP hearing representative, which was held on October 15, 2015.

By decision dated December 28, 2015, OWCP's hearing representative affirmed the March 10, 2015 termination. She found the weight of the medical opinion evidence rested with OWCP's referral physician, Dr. Collins, who found appellant no longer had any residuals or disability due to her accepted left knee sprain.

On March 11, 2016 appellant filed a claim for a schedule award (Form CA-7). No medical evidence was submitted in support of her claim.

By development letter dated March 17, 2016, OWCP informed appellant that it had not received a medical report which established that the accepted employment injury caused a permanent impairment of a scheduled member. It requested that she submit a detailed report from her treating physician which provided an impairment evaluation pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6<sup>th</sup> edition 2009). OWCP specifically requested an opinion as to whether she had reached maximum medical improvement (MMI), a diagnosis upon which the impairment was based, a detailed description of objective findings and subjective complaints, and a detailed description of any permanent impairment under the applicable criteria and tables in the A.M.A., *Guides*.

By decision dated July 6, 2016, OWCP denied appellant's claim for a schedule award as the evidence of record was insufficient to establish permanent impairment of a scheduled member due to the accepted work injury. It noted that she did not submit any evidence showing a measurable impairment due to the accepted March 26, 2014 employment injury.

On May 5, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on March 16, 2017.

Appellant submitted an October 19, 2016 impairment rating from Dr. Thomas L. Gritzka, a Board-certified orthopedic surgeon. Dr. Gritzka detailed medical and employment injury histories, reviewed medical evidence, and conducted a physical examination. He described that the mechanism of injury occurred when appellant fell and twisted her left knee after her left foot was caught on the corner of one of the mail butts. Dr. Gritzka opined that appellant sustained an aggravation of her left knee residual articular cartilage due to the accepted March 26, 2014 work injury. A physical examination revealed no left knee capsular instability; negative tests including Babinski sign, Lachman's test, anterior and posterior drawer signs, and McMurray's tests; no limp or list; bilateral knee and ankle reflexes were 1+, and no significant left knee genu varum. Dr. Gritzka noted appellant was a candidate for total left knee arthroplasty. He noted that prior to the accepted March 26, 2014 work injury appellant probably had a significant left knee medial collapse, which the January 2014 x-ray interpretations did not demonstrate as they were not weight-bearing.

Dr. Gritzka then used the sixth edition of the A.M.A., *Guides* to determine appellant's impairment rating. Using Table 16-3, page 511 he assigned a class 4 for appellant's very severe median impairment problem, which resulted in a 50 percent left lower extremity impairment. Dr. Gritzka also provided an impairment rating using the condition of medial collateral ligament insufficiency. Using Table 16-3, page 510, he assigned a class 2 for moderate left knee medial collateral ligament laxity, which when combined with decreased range of motion under Table 16-23, page 549 resulted in 16 percent left lower extremity impairment. Next, Dr. Gritzka determined that appellant had 16 percent left lower extremity impairment using Table 16-10, page 530 and diagnosed left knee medial collateral ligament tear. He noted that appellant's left knee was functional prior to the accepted March 26, 2014 employment injury and became more painful following the injury. Based on the left bone-on-bone contact, as demonstrated in the

May 9, 2014 magnetic resonance imaging (MRI) scan, Dr. Gritzka concluded that appellant had 50 percent left lower extremity impairment.

By decision dated May 5, 2017, an OWCP hearing representative affirmed the July 8, 2016 decision denying appellant's claim for a schedule award. He found there was no residual impairment due to the accepted left knee sprain. The hearing representative further found Dr. Gritzka based his opinion that appellant's current left knee conditions were causally related to the accepted injury on an inaccurate injury history as the injury did not involve a twisting motion, but was due to hyperextending her knee due to kicking tubs. Additionally, he found the record was devoid of any evidence that appellant had reached MMI as appellant was seeking total knee replacement surgery.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> 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 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*,<sup>5</sup> has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>6</sup>

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.<sup>7</sup> The Board notes that, before applying the A.M.A., *Guides*, OWCP must determine whether the claimed impairment of a scheduled member is causally related to the accepted work injury.<sup>8</sup> The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>9</sup>

OWCP procedures provide that termination of a claim for all benefits due to a finding of no residuals of work-related condition does not automatically bar a subsequent schedule award. Rather, OWCP should consider the schedule award matter separately from the termination of benefits. If a claimant applies for a schedule award after termination, and submits medical evidence reflecting permanent impairment as a result of the work-related injury or exposure,

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>6</sup> *See* 20 C.F.R. § 10.404.

<sup>7</sup> *Thomas P. Lavin*, 57 ECAB 353 (2006).

<sup>8</sup> *Michael S. Mina*, 57 ECAB 379, 385 (2006).

<sup>9</sup> *N.W.*, Docket No. 17-0427 (issued June 20, 2017); *Veronica Williams*, 56 ECAB 367 (2005).

OWCP should develop the claim further, even if a finding of no residuals has previously been made.<sup>10</sup>

### ANALYSIS

OWCP accepted that appellant sustained a left knee sprain while in the performance of duty on March 26, 2014. By decision dated December 28, 2015, an OWCP hearing representative affirmed a March 10, 2015 OWCP decision terminating appellant's compensation benefits. OWCP found that appellant's accepted left knee sprain had resolved without residuals or disability based on the opinion of Dr. Collins, an OWCP referral physician.

Appellant requested schedule award compensation. She has the burden of proof to establish that the condition for which a schedule award is being sought is causally related to her employment injury.<sup>11</sup>

The Board finds that the medical evidence of record is insufficient to establish permanent impairment of appellant's left knee causally related to the accepted employment injury.

In support of her claim for a schedule award appellant submitted an October 19, 2016 report from Dr. Gritzka who opined that, based upon appellant's history, the medical evidence of record, physical examination and his professional evaluation, appellant had 16 percent left leg permanent impairment due to medial collateral ligament insufficiency, 10 percent left lower extremity permanent impairment due to loss of range of motion, and 50 percent left lower extremity impairment due to absent cartilage interval in her left knee under to the A.M.A., *Guides*. The Board notes that these conditions were not accepted as causally related to the March 26, 2014 employment injury. Dr. Gritzka provided insufficient medical rationale to explain how the diagnosed conditions, allegedly causing impairment, were causally related to the resolved employment injury and not due to preexisting osteoarthritis of the left knee and obesity.<sup>12</sup> The Board finds that Dr. Gritzka's reports failed to sufficiently explain how the claimed permanent impairment arose from the accepted work injury of March 26, 2014. The need for detailed medical rationale is particularly important in a situation such as this where OWCP found, that all residuals of the accepted conditions had ceased.<sup>13</sup>

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<sup>10</sup> See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.11 (February 2013).

<sup>11</sup> *Supra* note 8.

<sup>12</sup> *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>13</sup> See *W.J.*, Docket No. 2011-0495 (issued October 7, 2011) (where the Board noted after OWCP terminated appellant's compensation benefits appellant filed a claim for a schedule award and submitted an impairment rating. The Board affirmed OWCP's decision denying a schedule award because the physician failed to sufficiently explain how the claimed impairment arose from the accepted work injury which had resolved).

The medical evidence submitted does not establish that appellant has permanent impairment to a scheduled member of the body causally related to her accepted injury. Consequently appellant has not established entitlement to a schedule award.<sup>14</sup>

On appeal counsel contends that both the factual presentation and legal analysis in the May 5, 2017 OWCP decision were incorrect. The Board disagrees. As explained above, appellant has not established employment-related permanent impairment of a scheduled member, warranting a schedule award.

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 failed to establish employment-related permanent impairment of a scheduled member, warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 5, 2017 is affirmed.

Issued: February 2, 2018  
Washington, DC

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

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

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

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<sup>14</sup> *Supra* note 9.