



slipped on ice and fell while delivering mail on his route. OWCP accepted his traumatic injury claim for right ankle sprain, right medial collateral ligament sprain, right medial meniscus tear, and bilateral chondromalacia patella. It also authorized a right knee arthroscopic procedure performed on June 10, 2014.<sup>2</sup> In October 2014, appellant returned to work in a limited-duty capacity.

An October 21, 2014 functional capacity evaluation (FCE) performed by Steve Flory, physical therapist, also included a right lower extremity permanent impairment rating under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (A.M.A., *Guides*). Mr. Flory based the 10 percent impairment rating on appellant having undergone partial medial and lateral meniscectomies.<sup>3</sup>

In a November 17, 2014 report, appellant's surgeon, Dr. Powell, similarly found 10 percent right lower extremity permanent impairment under the A.M.A., *Guides* 509 (6<sup>th</sup> ed. 2009). He explained that appellant's diagnosis of partial medial and lateral meniscal injury represented a "[c]lass 2" impairment Class of Diagnosis (CDX) under Table 16-3, A.M.A., *Guides* 509 (6<sup>th</sup> ed. 2009). The impairment range was 7 to 13 percent, with a default (C) lower extremity impairment of 10 percent. Dr. Powell assigned a grade modifier of 2 for Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS) for "moderate problem." Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), he calculated that appellant had a net adjustment of (2-2) + (2-2) + (2-2) = 0, which equated to 10 percent permanent impairment of the right lower extremity.<sup>4</sup>

Appellant retired effective January 1, 2016. On June 11, 2016 he filed a claim for a schedule award (Form CA-7).

OWCP referred the case record to Dr. Michael M. Katz, a Board-certified orthopedic surgeon and district medical adviser (DMA). On July 26, 2016 Dr. Katz reviewed the medical evidence of record and determined that appellant had reached maximum medical improvement (MMI) as of October 21, 2014, the date of the FCE. He concurred with the diagnosis of partial medial and lateral meniscectomies, but noted that the correct class of impairment for this diagnosis was class 1, not class 2 as Dr. Powell previously indicated. Dr. Katz assigned a grade modifier of 2 for (GMFH) and a grade modifier of 1 for (GMPE).<sup>5</sup> Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX), Dr. Powell calculated that appellant had a net adjustment of (2-1) + (1-1) + (n/a) = 1, which equated to a class 1, grade D impairment under Table 16-3, A.M.A., *Guides* 509 (6<sup>th</sup> ed. 2009). The final right lower extremity impairment rating was 12 percent.

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<sup>2</sup> Dr. Mark Powell, a Board-certified orthopedic surgeon, performed an arthroscopic right knee partial medial and lateral meniscectomies, chondroplasty, plica excision, and removal of loose bodies.

<sup>3</sup> Table 16-3, Knee Regional Grid, A.M.A., *Guides* 509 (6<sup>th</sup> ed. 2009).

<sup>4</sup> See section 16.3d, A.M.A., *Guides* 521 (6<sup>th</sup> ed. 2009).

<sup>5</sup> He did not assign a grade modifier for clinical studies as it was not supported by the evidence of record.

By decision dated November 7, 2016, OWCP granted appellant a schedule award for 12 percent permanent impairment of his right lower extremity. The award ran for 34.56 weeks for the period October 21, 2014 to June 19, 2015.

### **LEGAL PRECEDENT**

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>6</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>7</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>8</sup>

After obtaining all necessary medical evidence, the case file should be routed to the DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*.<sup>9</sup> The DMA should provide his or her rationale for the percentage of impairment specified.<sup>10</sup>

### **ANALYSIS**

OWCP accepted appellant's traumatic injury claim for right ankle sprain, right medial collateral ligament sprain, right medial meniscus tear, and bilateral chondromalacia patella. On June 10, 2014 appellant underwent OWCP-approved right knee arthroscopic surgery, which included partial medial and lateral meniscectomies. On November 7, 2016 OWCP granted him a schedule award for 12 percent permanent impairment of the right lower extremity. The award ran for a 34.56-week period from October 21, 2014 to June 19, 2015. It is appellant's burden to submit sufficient evidence to establish the extent of permanent impairment.<sup>11</sup>

In his November 17, 2014 report, Dr. Powell indicated that appellant had 10 percent permanent impairment of the right (knee) lower extremity. He found that appellant's partial medial and lateral meniscectomies represented a "class 2" impairment (CDX 2) under Table 16-3, A.M.A., *Guides* 509 (6<sup>th</sup> ed. 2009). However, a "partial medial and lateral" meniscectomy is only

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<sup>6</sup> For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</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>9</sup> *Id.* at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6f.

<sup>10</sup> *Id.*

<sup>11</sup> See *Annette M. Dent*, 44 ECAB 403 (1993).

a class 1 impairment (CDX 1) under Table 16-3. As a consequence of this classification error (CDX), Dr. Powell miscalculated the applicable net adjustment (0) and found only 10 percent permanent impairment of the right (knee) lower extremity.

In accordance with its procedures, OWCP properly referred the evidence of record to its DMA, Dr. Katz. In his July 26, 2016 report, Dr. Katz determined that appellant had reached MMI as of October 21, 2014, the date of the FCE. He concurred with Dr. Powell's diagnosis of partial medial and lateral meniscectomy, but noted that the correct class of impairment for this diagnosis was a class 1. Dr. Katz assigned a grade modifier of 2 for functional history and a grade modifier of 1 for physical examination. He explained that the record did not support assignment of a grade modifier for clinical studies. Applying the net adjustment formula (GMFH 2 - CDX 1) + (GMPE 1 - CDX 1), the DMA found a net adjustment of +1, which represented a class 1, grade D impairment of 12 percent of the right lower extremity.

The Board finds that OWCP's DMA applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Powell's clinical findings. The DMA's calculations were mathematically accurate. There is no other medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides* demonstrating a greater percentage of permanent impairment. For these reasons, the Board finds that OWCP properly relied on an OWCP DMA's assessment of 12 percent permanent impairment of the right lower extremity, in granting appellant's schedule award.

On appeal appellant contends that he had to use his own personal saved leave to get him to his retirement date of January 2, 2016 and is seeking a schedule award payment for the period June 19, 2015 to January 2, 2016. However, OWCP properly began the award on the date of MMI as found by OWCP's DMA.<sup>12</sup> The period covered by a schedule award commences on the date that the employee reaches MMI from the residuals of the employment injury.<sup>13</sup> In this case, the period of award ran for 34.56 weeks, the amount of time statutorily mandated under FECA for 12 percent permanent impairment of the right lower extremity.<sup>14</sup>

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 met his burden of proof to establish more than 12 percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

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<sup>12</sup> C.V., Docket No. 14-1449 (issued October 14, 2014).

<sup>13</sup> *Albert Valverde*, 36 ECAB 233, 237 (1984).

<sup>14</sup> 5 U.S.C. § 8107(c)(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 25, 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