

ISSUE

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

FACTUAL HISTORY

On December 17, 2013 appellant, then a 58-year-old plumber, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2013 he strained his right knee while working under a sink while in the performance of duty. He stopped work on December 20, 2013. On February 18, 2014 OWCP accepted appellant's claim for sprain of the right knee. On July 29, 2014 it expanded acceptance of the claim to include a right knee medial meniscus tear.

On October 10, 2014 appellant underwent authorized right knee arthroscopy, partial medial meniscectomy, loose body removal, and chondroplasty of the patellofemoral joint. In an operative report of the same date, Dr. Louis Rizio, a Board-certified orthopedic surgeon, noted preoperative and postoperative diagnoses of right knee medial meniscus tear, loose body, and chondromalacia of the patellofemoral joint. Appellant returned to full-time modified work as a customer care agent on March 20, 2017. In a letter dated March 21, 2017, OWCP notified him that it had therefore terminated his periodic wage-loss compensation payments, effective March 20, 2017.

On May 17, 2017 appellant filed a claim for a schedule award (Form CA-7).

In a development letter dated May 19, 2017, OWCP requested that appellant submit an impairment evaluation from his attending physician addressing the extent of his employment-related permanent impairment, if any, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

By decision dated July 19, 2017, OWCP denied appellant's claim for a schedule award, finding that the evidence submitted was insufficient to establish permanent impairment to a scheduled member or function of the body due to his accepted employment injury as defined by FECA.

On July 25, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a report dated November 29, 2017, Dr. Harvey R. Manes, a Board-certified orthopedic surgeon, performed a physical examination for evaluation of appellant's permanent impairment pursuant to the A.M.A., *Guides*. He indicated that appellant had full range of motion (ROM) and normal muscle strength of the right knee, and the only positive finding was crepitation. Dr. Manes noted that appellant's ROM was 150 degrees of flexion and 0 degrees of extension. He diagnosed arthritis and related that this condition was from his 2013 injury. Dr. Manes indicated that appellant had reached maximum medical improvement (MMI) on April 5, 2017. He further noted that, according to Table 16-3, Knee Regional Grid, of the A.M.A., *Guides*, page 511, appellant's

³ A.M.A., *Guides* (6th ed. 2009).

primary knee arthritis would be placed in class 1 with a default impairment of seven percent. Dr. Manes assigned a grade modifier of 1 for functional history (GMFH) under Table 16-6, page 516, for pain, stiffness, and weakness, and a grade modifier for physical examination (GMPE) from Table 16-7, page 517 of 1 for pain with crepitation and ROM. No grade modification was made for clinical study (GMCS) findings. He explained that, pursuant to the net adjustment formula on page 521, appellant would receive a net adjustment of zero, which would then result in the default rating of seven percent permanent impairment of the right lower extremity.

On January 16, 2018 a telephonic hearing with an OWCP hearing representative was held. At the hearing, the hearing representative noted that appellant had now submitted an impairment evaluation. By decision dated January 26, 2018, she remanded the case to OWCP for further medical development, noting that she had made a summary decision, which was outlined in the hearing transcript.

On February 12, 2018 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), reviewed the SOAF, medical records, and Dr. Manes' permanent impairment evaluation. Upon review of the record, he diagnosed status post right knee arthroscopic partial medial meniscectomy, loose body removal, and chondroplasty. Using the diagnosis-based impairment method, the DMA indicated that appellant had three percent permanent impairment of the right lower extremity as he had undergone a partial medial meniscectomy, under Table 16-3, page 509 of the A.M.A., *Guides*.

The DMA also related that the A.M.A., *Guides* did not allow for impairment ratings to be calculated using the ROM method for appellant's diagnosis. He noted that Dr. Manes' impairment evaluation was based on the Knee Regional Grid for arthritis and, while the operative report and MRI scan showed arthritic changes in appellant's knee, the Knee Regional Grid, Table 16-3 at page 511, calculated permanent impairment for arthritis based on radiographic evidence of a three millimeter cartilage interval, full thickness articular cartilage defects, and/or ununited osteochondral fractures. The DMA indicated that none of appellant's medical records contained the required findings of retained joint space. He related that the date of MMI was November 29, 2017, the date of Dr. Manes' physical examination, because an April 5, 2017 date of MMI was not supported by the medical evidence.

By decision dated April 26, 2018, OWCP granted appellant a schedule award for three percent permanent impairment of the right lower extremity. The period of award ran for 8.64 weeks from November 29, 2017 to January 28, 2018.

On May 2, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.⁴ The hearing was held on September 19, 2018.

By decision dated October 26, 2018, OWCP's hearing representative affirmed the April 26, 2018 decision, finding that the evidence of record failed to establish that appellant had

⁴ Appellant submitted additional evidence with the request. However, this evidence pertained to an unrelated hearing loss claim.

more than three percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁵ and its implementing federal regulations,⁶ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.⁹ After the class of diagnosis (CDX) is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹⁰ Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹¹

In some instances, a DMA's opinion can constitute the weight of the medical evidence.¹² This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*.¹³ In this instance, a detailed opinion by a DMA may constitute the weight of the medical evidence as long as he or she explains his or her opinion, shows values and computation of impairment based on the A.M.A., *Guides*, and

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ *See* A.M.A., *Guides* 509-11 (6th ed. 2009).

¹⁰ *Id.* at 515-22.

¹¹ *Id.* at 23-28.

¹² *J.H.*, Docket No. 18-1207 (issued June 20, 2019); *M.P.*, Docket No. 14-1602 (issued January 13, 2015); *supra* note 8 at Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.8(j) (September 2010).

¹³ *Id.*

considers each of the reported findings of impairment.¹⁴ If the attending physician misapplied the A.M.A., *Guides*, no conflict would exist because the attending physician's report would have diminished probative value and the opinion of the DMA would constitute the weight of medical opinion.¹⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than three percent permanent impairment of the right lower extremity, for which he previously received a schedule award.

In support of his schedule award claim, appellant submitted an impairment evaluation report from Dr. Manes dated November 29, 2017. Based on physical examination and the Knee Regional Grid for arthritis in the A.M.A., *Guides*, Table 16-3, Dr. Manes calculated a permanent impairment rating of seven percent of appellant's right lower extremity.

OWCP referred Dr. Manes' report to Dr. Harris, its DMA for review. The DMA explained that Dr. Manes' impairment evaluation was based on the Knee Regional Grid, Table 16-3 for arthritis, which was inappropriate as appellant's examination did not include findings of three millimeter cartilage interval, full thickness articular cartilage defect, or ununited osteochondral fracture.

The DMA found that appellant had a three percent permanent impairment of the right lower extremity based upon his partial medial meniscectomy. The Board has held that, when an attending physician's report gives an estimate of permanent impairment, but it is not based on proper application of the A.M.A., *Guides*, OWCP may follow the advice of its medical adviser if he has properly used the A.M.A., *Guides*.¹⁶ The Board, thus, finds that OWCP properly found the impairment rating by the DMA constituted the weight of the medical evidence. The DMA's opinion was based on an accurate SOAF and the complete medical record. He provided a thorough impairment rating, utilizing the appropriate portions of the A.M.A., *Guides* for appellant's partial medial meniscectomy under Table 16-3, page 509. The DMA described how appellant's objective findings and physical examination warranted the specified percentage of impairment.

There is no additional evidence of record which provides for a higher rating of permanent impairment. Therefore, the Board finds that appellant has not met his burden of proof to establish greater than the three percent permanent impairment of the right lower extremity previously awarded.

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.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See P.L.*, Docket No. 17-0355 (issued June 27, 2018); *see also Ronald J. Pavlik*, 33 ECAB 1596 (1982).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than three percent permanent impairment of the right lower extremity, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board