



By report dated October 21, 2002, an Office medical adviser opined that appellant had a 51 percent right leg permanent impairment. The medical adviser found a 50 percent impairment for medial joint space of 0 millimeters and 2 percent for a partial medial meniscectomy, combined to total a 51 percent leg impairment.

In a decision dated November 4, 2002, the Office issued a schedule award for a 51 percent permanent impairment to the right leg. The period of the award was 146.88 weeks commencing September 28, 2002.

On February 12, 2007 appellant underwent a right knee total arthroplasty, performed by orthopedic surgeon, Dr. Kenneth Davenport. The diagnosis was right knee degenerative joint disease. An Office medical adviser opined in a May 28, 2008 report that the surgery was causally related to the employment injury.

On May 20, 2009 appellant filed a claim for a schedule award. In a report dated July 23, 2009, Dr. Jeffrey Wirebaugh, a family practitioner, stated that appellant was evaluated “to determine the percentage of permanent impairment resulting from his recognized conditions of ‘osteoarthritis; sprain of knee and leg; and tear medial meniscus’ all of the left knee [sic].” He listed the prior knee surgeries and provided results on examination of the left knee. With respect to permanent impairment, Dr. Wirebaugh opined that appellant had a 21 percent leg impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6<sup>th</sup> ed. 2008). He applied the knee regional grid (Table 16-3), with a default impairment of 25 percent for a good result from a total knee replacement and adjusted the impairment to 21 percent based on Grade Modifier (GM) 1 for functional history (FH) and physical examination (PE) and zero for clinical studies (CS).

In a decision dated December 7, 2009, the Office found that appellant was not entitled to an additional schedule award.

Appellant requested a telephonic hearing before an Office hearing representative. On February 11, 2010 he submitted a February 2, 2010 report from Dr. William Grant, an internist, who provided a brief history and results on examination of the right knee. Based on flexion contracture of 10 degrees Dr. Grant found that appellant had a 20 percent impairment under Table 16-23 of the A.M.A., *Guides*, with an additional 20 percent for flexion of 70 degrees. He combined the 20 percent impairments using a Combined Values Chart for a 36 percent right leg impairment.

At the March 16, 2010 telephonic hearing, appellant’s representative noted that Dr. Wirebaugh had referred to the left knee and appellant had not received a schedule award for the left leg.

By decision dated May 11, 2010, the Office hearing representative found that appellant had not established more than a 51 percent right leg permanent impairment or an employment-related left knee condition.

## LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>1</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>2</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the (6<sup>th</sup> ed. 2008).<sup>3</sup>

## ANALYSIS -- ISSUE 1

Appellant received a schedule award on November 4, 2002 for a 51 percent permanent impairment to his right leg, based on his right knee injury sustained on December 9, 1996. He underwent a total right knee replacement surgery on February 12, 2007 and he sought an additional schedule award in a May 20, 2009 Form CA-7. As noted above, any schedule award decision after May 1, 2009 must be based on the (6<sup>th</sup> ed. 2008). The issue is whether appellant has more than a 51 percent right leg impairment.

A total knee replacement surgery is specifically addressed by Table 16-3 of the A.M.A., *Guides*. For a good result, the default impairment is 25 percent and this may be adjusted based on FH, PE and CS.<sup>4</sup> Dr. Wirebaugh applied Table 16-3 and then adjusted the impairment down to 21 percent, identifying GM 1 (mild problem) for FH and PE and zero (no problem) for CS.<sup>5</sup> The Board notes that there is some confusion with Dr. Wirebaugh's report, since he refers to the left knee, instead of the right knee. Given that Dr. Wirebaugh identified each of the accepted right knee conditions and a history of the right knee injury, it would appear that his reference to the left knee was a mistake. For the purposes of the right knee permanent impairment issue, the Board will assume Dr. Wirebaugh intended to identify the right knee. As such, Dr. Wirebaugh's report represents a rationalized medical opinion that appellant had a 21 percent right leg impairment under the sixth edition of the A.M.A., *Guides* based on the right knee injury. Since appellant previously received a schedule award for a 51 percent impairment of the right knee, he has not established greater impairment than previously award.

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<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>2</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>3</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>4</sup> A.M.A., *Guides* 511, Table 16-3 and 515-521.

<sup>5</sup> The formula for adjusting the default impairment value is (GMFH – CDX) + (GMPE – CDX) + (GMCS – CDX). *Id.* at 521. If the net adjustment is -1, the leg impairment is 23 percent and -2 is a 21 percent leg impairment under Table 16-3. Dr. Wirebaugh found a -2 net adjustment.

Dr. Grant also provided an opinion as to the degree of permanent impairment under the sixth edition of the A.M.A., *Guides*; but his rating is not fully rationalized. He referenced Table 16-23 for knee motion impairments. The A.M.A., *Guides* clearly stated that diagnosed-based impairment (*i.e.* Table 16-3, the knee regional grid discussed above) is the “method of choice” and the range of motion tables are to be used only “when other grids refer you to this section or no other diagnosis-based section of this chapter are applicable for impairment rating of a condition.”<sup>6</sup> Dr. Grant provided no explanation as to why Table 16-23 would be appropriate in rating appellant’s permanent impairment. Moreover, even if the table were correctly applied,<sup>7</sup> it would not establish more than the previous award of 51 percent.

For these reasons, the Board finds that the medical evidence of record does not establish more than a 51 percent right leg impairment, for which appellant received a schedule award. The Office properly found that he was not entitled to an additional award for the right leg based on the accepted right knee injuries.

### **LEGAL PRECEDENT -- ISSUE 2**

To be entitled to a schedule award under 5 U.S.C. § 8107, the permanent impairment must be causally related to an accepted employment injury.<sup>8</sup> An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including that any specific condition for which compensation is claimed is causally related to the employment injury.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

Appellant indicated at the March 16, 2010 telephonic hearing that he wished the Office to consider a left leg impairment. The Board notes that the only medical report of record referring to the left knee was Dr. Wirebaugh’s July 23, 2009 report. No previous medical report had noted a left knee injury or condition. Appellant stated in an October 3, 2007 letter to the Office, “My left knee is just fine.” To the extent that Dr. Wirebaugh was intending to discuss the left knee, his history was completely inaccurate.<sup>10</sup> There is no probative medical evidence of an injury to the left knee causally related to the December 9, 1996 employment injury. A permanent impairment must be based on an employment-related condition and the Board finds that appellant has not established an employment-related left knee condition. The Office properly found that he was not entitled to a schedule award for the left leg.

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<sup>6</sup> *Id.* at 543.

<sup>7</sup> The actual impairment under Table 16-23 would be 40 percent based on Dr. Grant’s findings, since the table states that multiple deficit motion impairments are added, not combined under the Combined Values Chart.

<sup>8</sup> *Rosa Whitfield Swain*, 38 ECAB 368 (1987).

<sup>9</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>10</sup> It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value *see Patricia M. Mitchell*, 48 ECAB 371 (1997); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

**CONCLUSION**

The Board finds that appellant did not establish more than a 51 percent permanent impairment to his right leg. The Board further finds that the Office properly determined he had not established a left knee injury or employment-related permanent impairment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 11, 2010 is affirmed.

Issued: February 10, 2011  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board