

FACTUAL HISTORY

On December 24, 2006 appellant, then a 56-year-old assistant canteen officer, sustained injury when he slipped and fell on a wet walkway. OWCP accepted the claim for sprains to the lumbar region and right shoulder, acromioclavicular.

On April 18, 2007 appellant struck his left knee against barrels at work. OWCP accepted the claim for sprains to the lumbar spine and both knees and legs and a tear of the left medial meniscus.² On September 7, 2007 appellant underwent an authorized left arthroscopic medial meniscus repair. This claims were doubled into the current case record.³ Appellant retired from federal employment on or about July 16, 2008.

On July 2, 2009 OWCP received appellant's June 16, 2009 claim for a schedule award. In a February 17, 2009 report, Dr. John W. Ellis, a family practitioner, opined that under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) appellant had 18 percent impairment to the left lower extremity. In a November 18, 2009 report, he noted the history of injury and presented findings on examination. Dr. Ellis stated that he applied the sixth edition of the A.M.A., *Guides* to rate an 18 percent permanent impairment of appellant's left leg due to peripheral nerve impairment under Table 16-2, page 535.

In an April 7, 2010 report, Dr. Ronald Blum, an OWCP medical adviser, reviewed the record and recommended that appellant be referred for a second opinion examination. He noted that the impairment rating by Dr. Ellis for the left leg was based on abnormalities found in the L4, L5 and S1 nerve roots but the report of electrodiagnostic testing did not support the presence of radiculopathy.

Appellant was referred by OWCP for examination by Dr. J. Clark Race, a Board-certified orthopedic surgeon. In a May 18, 2010 report, he reviewed the history of injury, medical treatment and presented findings on examination. Dr. Race reviewed the electromyogram and nerve conduction studies obtained on October 7, 2008 which were reported as normal for the left side. On examination, he found no evidence of radicular abnormalities and concluded that there was no permanent impairment for the accepted lumbar injury. Dr. Race advised that appellant's left leg impairment would be based on the left medial meniscus tear. Under Table 16-3 for meniscal injury, he assigned class 1 impairment. Dr. Race assigned a Functional History (GMFH) modifier of 1; a Physical Examination (GMPE) modifier of 1; and a Clinical Studies (GMCS) modifier of 0-1. He utilized the net adjustment formula of (GMFH - CDX) (1-1) + (GMPE - CDX) (1-1) + (GMCS - CDX) (0-1) to find a net adjustment of negative 1, which equaled a grade B. This yielded a two percent impairment of the left leg.

² This claim was accepted under OWCP claim number xxxxxx958, which has been consolidated with claim number xxxxxx732.

³ The Board notes that OWCP developed the medical evidence with regard to appellant's right shoulder condition; however, that aspect of the case is not presently on appeal.

On March 11, 2011 OWCP granted appellant a schedule award for two percent permanent impairment of the left leg based on the partial medial meniscectomy.

On August 17, 2012 appellant filed a claim for an increased schedule award. On October 27, 2011 Dr. Eduardo Garcia, a Board-certified anesthesiologist and pain specialist, reviewed the history of injury, medical treatment, clinical studies and provided examination findings of the left knee. He opined that appellant had a two percent left leg impairment due to the left medial meniscus tear and repair. Under Table 16-3, page 509, Dr. Garcia assigned class 1 impairment for the meniscal tear and repair. He assigned grade modifier functional history of 0; found grade modifier physical examination to be nonapplicable; and grade modifier clinical studies of 1. Dr. Garcia utilized the net adjustment formula of (GMFH - CDX) (0-1) + (GMPE - CDX) (N/A) + (GMCS - CDX) (1-1) to find a net adjustment of -1, which equaled a grade B, which yielded two percent final impairment of the left lower extremity.

In a September 11, 2012 report, Dr. H. Mobley, a medical adviser, reviewed Dr. Garcia's impairment rating of appellant's left lower extremity. He found that appellant reached maximum medical improvement on October 27, 2011, the date of Dr. Garcia's examination. Dr. Mobley determined that Dr. Garcia properly applied the sixth edition of the A.M.A., *Guides* to rate two percent left leg impairment based on a partial medial meniscectomy. Since appellant was previously rated with two percent impairment, the medical evidence did not support an increase in impairment to the left leg.

By decision dated September 28, 2012, OWCP denied appellant's claim for an additional schedule award for the left lower extremity.

On October 24, 2012 appellant requested a review of the written record before an OWCP hearing representative. He submitted copies of Dr. Garcia's October 27, 2011 report and Dr. Mobley's review.

By decision dated February 14, 2013, an OWCP hearing representative affirmed the September 28, 2012 decision. She found that the medical evidence did not support more than two percent impairment to appellant's left leg.⁴

LEGAL PRECEDENT

A claim for an increased schedule award may be based on new exposure.⁵ Absent any new exposure to employment factors, a claim for an increased schedule award may be based on medical evidence establishing the progression of an employment-related condition that has resulted in a greater permanent impairment.⁶

⁴ The hearing representative noted that OWCP did not adjudicate the right arm in the September 28, 2012 decision and she remanded that aspect of the claim for further review and a final decision.

⁵ *A.A.*, 59 ECAB 726 (2008); *Tommy R. Martin*, 56 ECAB 273 (2005); *Rose V. Ford*, 55 ECAB 449 (2004).

⁶ *James R. Hentz*, 56 ECAB 573 (2005); *Linda T. Brown*, 51 ECAB 115 (1999).

In determining entitlement to a schedule award, preexisting impairment to the scheduled member should be included.⁷ Any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.⁸

The schedule award provision of FECA and its implementing regulations⁹ 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.¹⁰ 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* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.¹¹ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to rate permanent impairment.¹²

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).¹³ Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.¹⁴ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁵

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file may be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹⁶

⁷ *Carol A. Smart*, 57 ECAB 340 (2006); *Michael C. Milner*, 53 ECAB 446 (2002).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(a)(2) (January 2010).

⁹ 20 C.F.R. § 10.404.

¹⁰ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

¹¹ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

¹² *Supra* note 8 at Chapter 2.808.6.6a (January 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹³ A.M.A., *Guides* 3-6 (6th ed. 2008).

¹⁴ *Id.* at 494-531.

¹⁵ *Id.* at 521.

¹⁶ *See supra* note 8 at Chapter 2.808.6(d) (August 2002).

ANALYSIS

The Board finds that appellant did not establish that he sustained more than two percent impairment of the left leg based upon a partial medial meniscectomy.

OWCP combined claim number xxxxxx958 into the current case, which was accepted for the conditions of sprains to the lumbar spine, left knee and leg and a tear of the left medial meniscus, for which appellant underwent surgery. By decision dated March 11, 2011, appellant received a schedule award for two percent permanent impairment of the left lower extremity based on the partial medial meniscectomy.

In support of his claim for increased impairment, appellant submitted medical evidence from Dr. Garcia. With regard to the left lower extremity, Dr. Garcia stated that appellant had two percent impairment due to the partial meniscus tear and repair. Under Table 16-3, page 509, appellant had class 1 impairment for the meniscal tear and repair. Under Table 16-6, page 516, Dr. Garcia assigned a functional history modifier 0; under Table 16-7, page 517, he found that the physical examination modified was not applicable; and under Table 16-8, page 519, he assigned a clinical studies modifier 1. Under Table 16-9, page 520, Dr. Garcia utilized the net adjustment formula of (GMFH - CDX) (0-1) + (GMPE - CDX) (N/A) + (GMCS - CDX) (1-1) to find a net adjustment of -1. This equals grade B, which represents two percent impairment to the left lower extremity.

Dr. Mobley reviewed Dr. Garcia's impairment evaluation and determined that appellant reached maximum medical improvement on October 27, 2011. He agreed with Dr. Garcia's impairment rating under the A.M.A., *Guides*. The Board finds that Dr. Garcia properly utilized the A.M.A., *Guides* to rate appellant's impairment to the left lower extremity. There is no other probative medical evidence of record to establish greater permanent impairment. As the rating by Dr. Garcia was the same as that provided by Dr. Race, the medical evidence does not establish greater impairment than previously compensated.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing the progression of his employment-related condition resulting in greater impairment.

CONCLUSION

The Board finds that appellant has two percent permanent impairment of the left lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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