

right knee buckled and he heard a pop. OWCP accepted appellant's claim for left ankle sprain/strain and aggravated dislocation of the right knee. Appellant received a schedule award for a 26 percent permanent impairment of his right lower extremity due to a two-millimeter cartilage interval combined with a total lateral meniscectomy.²

On June 23, 2005 appellant, now a 50-year-old supervisory officer, sustained a traumatic injury in the performance of duty when he caught his right leg on a carpet and he felt his right knee twist and pop.³ OWCP accepted his claim for a right lateral collateral ligament sprain/strain, a torn right lateral meniscus and localized primary osteoarthritis of the right lower extremity. X-rays revealed no joint space remaining in the knee, a condition described as "bone on bone." Appellant received a schedule award for a 25 percent permanent impairment of his right lower extremity due to residual degenerative joint disease of the knee with complete loss of joint space, a rating that was stated to take into account mild lateral ligament laxity and a tear of the lateral meniscus. An OWCP medical adviser explained that the 25 percent rating was the sole impairment of the right lower extremity resulting from the accepted work injury of June 23, 2005.

In a January 10, 2012 decision, OWCP found that appellant was overpaid \$78,124.61, the amount of his second schedule award, because his impairment had actually decreased, and he was therefore not entitled to the second schedule award.

In September 2010 appellant underwent a total knee arthroplasty on the right. He filed a claim for an additional schedule award.

Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon and OWCP second opinion physician, evaluated appellant's impairment in 2011. He found that appellant had received a good result from his total knee arthroplasty. The position of the prosthetic was good, and the knee was both stable and functional. Under Table 16-3, page 511 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), Dr. Swartz noted a default lower extremity impairment value of 25 percent. He adjusted the default value to 21 percent for a normal functional history and mild findings on physical examination.

Dr. Craig M. Uejo, a district medical adviser, reviewed Dr. Swartz' evaluation and found a 31 percent impairment of the right lower extremity. Given objective findings of a mild motion deficit, he determined that appellant had received only a fair result from his total knee arthroplasty, which had a default impairment value of 37 percent under Table 16-3. Dr. Uejo agreed with Dr. Swartz that appellant had a normal functional history and clinical studies showed a good stable alignment, indicative of a moderate problem under Table 16-8, page 519. These modifiers changed the impairment rating to 31 percent.

On April 4, 2012 OWCP issued a schedule award for an additional six percent impairment of the right lower extremity. Appellant had previously received a schedule award for 25 percent, and now his impairment rating was 31 percent. OWCP notified him that it was

² OWCP File No. xxxxxx937.

³ OWCP File No. xxxxxx064.

applying this additional award to the overpayment created by his second schedule award. Appellant appealed this decision to the Board.⁴

On the prior appeal, the Board set aside OWCP's overpayment decision. It was not enough, the Board explained, to compare the final impairment ratings of appellant's first two schedule awards. Both were issued under the fifth edition of the A.M.A., *Guides* (2001). Appellant's first award represented a 20 percent impairment due to arthritis and a 7 percent impairment due to a total lateral meniscectomy. His second award should have reflected a 50 percent impairment due to zero joint space in his arthritic knee⁵ and a 7 percent impairment due to mild laxity of the lateral collateral ligament,⁶ which combined for a total impairment of 54 percent.⁷ As appellant's arthritis had worsened considerably since his first schedule award, he was entitled to an additional schedule award. The Board therefore found that OWCP had not established fact of overpayment. As no debt was established, OWCP had no basis for recovery.

Dr. Ronald M. Lampert, a Board-certified orthopedic surgeon and OWCP second opinion physician, evaluated appellant's impairment in January 2013. He found a 21 percent impairment of the right lower extremity, as Dr. Swartz had found in 2011.

Arthur S. Harris, M.D. and an orthopedic consultant, reviewed Dr. Lampert's evaluation and found a 34 percent impairment of the right lower extremity. As before, appellant's mild motion deficit indicated only a fair result from his total knee arthroplasty, the default impairment value of which was 37 percent. There was no adjustment for functional history, as appellant was ambulating with the use of a cane. As clinical studies showed no obvious, significant abnormalities, indicating a mild problem, the default impairment value was adjusted to 34 percent.

In a decision dated August 5, 2013, OWCP denied an additional schedule award. It found that appellant had already received schedule awards of 26, 25 and 6 percent, or a total of 57 percent for his right lower extremity. As his current impairment was only 34 percent, he was not entitled to an additional award. Appellant requested a hearing.

In a decision dated February 21, 2014, an OWCP hearing representative affirmed the August 5, 2013 decision. She found that the evidence failed to establish that appellant had more than a 57 percent impairment of his right lower extremity, for which he had previously received schedule awards.

On appeal, appellant argues that he should receive an additional schedule award of 3 percent, as he currently has a 34 percent impairment but was previously found to have a 31 percent impairment. He adds that OWCP erred in applying his additional award of six percent to

⁴ Docket No. 12-563 (issued September 10, 2012).

⁵ A.M.A., *Guides* 544, Table 17-31.

⁶ *Id.* at 546, Table 17-33.

⁷ Combined Values Chart, page 604.

the overpayment that the Board would later set aside. Appellant notes that OWCP has not released the funds to him.

LEGAL PRECEDENT

The schedule award provision of FECA⁸ and the 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. OWCP has adopted the A.M.A., *Guides* 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 calculate schedule awards.¹²

ANALYSIS

The Board herein reviews the evaluation of appellant's right lower extremity to determine his current impairment rating. The Board will then compare that rating to the schedule awards appellant has already received to determine whether he is entitled to any additional compensation.

Diagnosis-based impairment is the primary method of evaluating the lower limb. Impairment is determined first by identifying the relevant diagnosis, then by selecting the class of the impairment (no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss), which will provide a default impairment rating, and finally by adjusting the default rating up or down for grade, which is calculated using grade modifiers or nonkey factors (functional history, physical examination, clinical studies).¹³

Table 16-3, the Knee Regional Grid, shows the impairment values for a total knee replacement on page 511. A good result is characterized by good position, stability, and functionality. This is indicative of a moderate problem and has a default impairment value of 25 percent. Indeed, 25 percent is the highest rating awarded for a good result. A fair result is

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404.

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

¹¹ 20 C.F.R. § 10.404; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

¹³ A.M.A., *Guides* 497.

characterized by fair position, mild instability and/or mild motion deficit. It is indicative of a severe problem and has a default impairment value of 37 percent.

Dr. Swartz and Dr. Lampert, the second opinion orthopedic surgeons, found that appellant had received a good result from his total knee arthroplasty, but both found a mild motion deficit, which is indicative of fair result and a default impairment value of 37 percent.

As the mild motion deficit was used to define appellant's result as fair, it is not again used to modify the default impairment value.¹⁴ The most recent OWCP medical adviser indicated that appellant was ambulating with the use of a cane, as per Dr. Lampert, who reported: "Examination shows that he walks without a cane and without a limp." This reflects a normal functional history under Table 16-6, page 516. Clinical studies reflect a moderate problem. As both functional history and clinical studies indicate a lower class of impairment than the default value for a total knee arthroplasty, the default value is adjusted two steps down to 31 percent. This is the final impairment rating for appellant's right lower extremity under the applicable sixth edition of the A.M.A., *Guides*.

The history of this case shows that appellant previously received two schedule awards under the fifth edition of the A.M.A., *Guides*: one for a 26 percent impairment of his right lower extremity, and another for a 25 percent impairment. Appellant has thus received compensation for a total impairment of 51 percent. OWCP issued a third schedule award under the sixth edition of the A.M.A., *Guides* for an additional six percent impairment, but appellant did not receive this award as it had been credited against the outstanding overpayment.

Accordingly, in order to establish that he is entitled to the additional six percent, appellant has the burden to establish that the impairment of his right lower extremity under the sixth edition is greater than 51 percent. The most recent examination of appellant's right lower extremity supports a current rating of 31 percent under the sixth edition of the A.M.A., *Guides*. The Board therefore finds that appellant is not entitled to an additional schedule award. The Board will affirm OWCP's February 21, 2014 decision.

Appellant presently argues that he should receive an additional schedule award of three percent. He was found to have a 31 percent impairment in 2012, and OWCP's review of Dr. Lampert's 2013 evaluation showed a 34 percent impairment. Although OWCP's review of Dr. Lampert's evaluation showed a 34 percent impairment, that rating was erroneously based on appellant's reported use of a cane. In fact, Dr. Lampert reported that appellant ambulated without a cane and without a limp, a functional history that warranted further downward modification of the default impairment value. His evaluation actually showed a 31 percent impairment, the same rating found in 2012. Also, appellant cannot disregard the two schedule awards he received under the fifth edition of the A.M.A., *Guides*. These awards had already compensated him for a 51 percent total impairment of his right lower extremity, primarily due to arthritis that had worsened to "bone on bone." With his total knee arthroplasty, of course, appellant no longer has right knee arthritis. Even with a fair result from his surgery, his right lower extremity impairment has improved, not worsened. Appellant is not entitled to an additional award.

¹⁴ *Id.* at 515-16.

Appellant argues that OWCP erred in applying his most recent award, an additional award of six percent, to the overpayment that the Board would later set aside. As he had already received two schedule awards totaling 51 percent, OWCP properly denied an additional award in 2012, as it correctly does in 2014, based on an impairment rating of 31 percent following the right knee arthroplasty. The Board will not require OWCP to release funds that are erroneously granted.

CONCLUSION

The Board finds that appellant is not entitled to an additional schedule award for his right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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