

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.M., Appellant**

**and**

**DEPARTMENT OF VETERAN'S AFFAIRS,  
VETERAN'S HEALTH ADMINISTRATION,  
Omaha, NE, Employer**

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**Docket No. 13-1994  
Issued: January 24, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 28, 2013 appellant filed a timely appeal from an August 7, 2013 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained more than a two percent impairment of the left leg for which she received a schedule award.

**FACTUAL HISTORY**

On July 16, 2012 appellant, then a 52-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 11, 2012 she sustained a left knee injury when she

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

slipped on water and fell. On September 24, 2012 OWCP accepted the claim for left knee grade 1 medial collateral ligament sprain. On October 15, 2012 it expanded the claim to include left knee plica syndrome.

Appellant was treated by numerous physicians including Dr. Nathan C. Birch, Board-certified in internal medicine. A July 11, 2012 magnetic resonance imaging (MRI) scan of the left knee revealed grade 1 medial collateral ligament (MCL) sprain and mild medial and patellofemoral compartment degenerative joint disease. In a September 28, 2012 orthopedic note, Dr. Brent R. Hood, an attending orthopedic surgeon, reported that appellant's most recent MRI scan of the left knee showed that the MCL sprain had healed with no further edema.

On November 5, 2012 appellant underwent a left knee arthroscopic debridement of the plica and a chondroplasty of the medial and femoral condyles.

On May 1, 2013 appellant filed a claim for a schedule award (Form CA-7). She submitted an April 26, 2013 report from Dr. Birch, who reported that her left knee condition had reached maximum medical improvement (MMI). Dr. Birch did not provide any assessment of permanent impairment.

By letter dated May 9, 2013, OWCP requested that appellant provide a detailed medical report from a treating physician outlining her current condition, whether she had permanent impairment as a result of her work-related condition and whether maximum medical improvement had been reached.

In a May 13, 2013 report, Dr. Birch reported that appellant's left knee condition had reached a permanent and fixed state. He noted that she had some swelling of the knee and was limited in her ability to bend the knee. Dr. Birch deferred a rating of impairment.

On January 13, 2013 OWCP referred the record to an OWCP district medical adviser (DMA). In a January 17, 2013 report, Dr. Daniel D. Zimmerman recommended that OWCP refer appellant for a second opinion evaluation.

On June 18, 2013 OWCP referred appellant, together with a statement of accepted facts, to Dr. Morgan T. Laholt, Board-certified in physical medicine and rehabilitation, for a second opinion evaluation.

In a July 18, 2013 report, Dr. Laholt reviewed the statement of accepted facts and medical record and provided a summary of the medical and diagnostic reports. Upon physical examination, he diagnosed grade 1 medial collateral ligament sprain and post-traumatic plica. Dr. Laholt stated that maximum medical improvement had been reached as of April 26, 2013. Using Table 16-3, Knee Regional Grid, of the A.M.A., *Guides*, he placed appellant in the diagnostic category of "soft tissue" based on her diagnosis of plica syndrome and medial collateral ligament sprain.<sup>2</sup> Dr. Laholt stated that her medial collateral ligament strain had healed as evidenced by MRI scan, did not require intervention or show any laxity on physical examination. He found that this yielded a class 1 rating with a default impairment of one percent

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<sup>2</sup> A.M.A., *Guides* 509, Table 16-3.

based on significant consistent palpatory and radiographic findings.<sup>3</sup> Dr. Laholt found a functional history grade modifier of 2 due to appellant's use of a single gait aide and antalgic limp.<sup>4</sup> The physical examination modifier was one based on continued swelling and tenderness.<sup>5</sup> The clinical studies modifier was one given that her MRI scan confirmed mild pathology.<sup>6</sup> Applying the net adjustment formula, Dr. Laholt concluded that appellant had a two percent permanent impairment to the left lower extremity.<sup>7</sup>

In a July 25, 2013 report, Dr. Zimmerman stated that the date of maximum medical improvement was the date of Dr. Laholt's examination on July 18, 2013. He agreed with Dr. Laholt's impairment rating of two percent of the left leg which was established by the A.M.A., *Guides*.<sup>8</sup>

By decision dated August 7, 2013, OWCP granted appellant a schedule award for two percent permanent impairment of the left leg. The date of maximum medical improvement was noted as July 18, 2013. The award covered a period of 5.76 weeks from July 18 to August 27, 2013.

### **LEGAL PRECEDENT**

The schedule award provision of FECA and its implementing regulations 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.<sup>9</sup> 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 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.<sup>10</sup>

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF). For lower extremity impairments, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 516, Table 16-6.

<sup>5</sup> *Id.* at 517, Table 16-7.

<sup>6</sup> *Id.* at 519, Table 16-8.

<sup>7</sup> *Supra* note 2.

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

<sup>10</sup> *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

(GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).<sup>11</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>12</sup> Evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>13</sup>

### ANALYSIS

OWCP accepted appellant's claim for left knee plica syndrome and left knee grade 1 medial collateral ligament sprain. The issue is whether she has more than a two percent permanent impairment of the left leg. The Board finds that appellant has not met her burden of proof to establish that she has greater impairment of her leg.

Appellant was seen by OWCP's medical adviser, who requested OWCP refer her to a second opinion physician. The Board finds that Dr. Laholt, the second opinion physician, examined appellant's left knee on July 18, 2013 under the relevant standards of the sixth edition of the A.M.A., *Guides*. Dr. Laholt found that according to Table 16-3, Knee Regional Grid, appellant fell under the diagnosis-based category of "soft tissue" including plica. He selected class 1 based upon significant palpatory and radiographic findings with a mid-range default value of one percent lower extremity impairment.<sup>14</sup> Dr. Laholt addressed the grade assignments and found a grade modifier of 2 for functional history due to appellant's continued use of a single gait aide and antalgic limp; a grade modifier of 1 for physical examination based on continued swelling and tenderness; and a grade modifier of 1 for clinical studies given that her diagnostic studies confirmed mild pathology.<sup>15</sup> He applied the net adjustment formula and subtracted 1, the numerical value of the class, from the numerical value of the grade modifier for each component (functional history, physical examination and clinical studies). He added those values, resulting in a net adjustment of 1.<sup>16</sup> Dr. Laholt stated that the regional grid identified the impairment rating value for the impairment class as class 1, grade D or two percent permanent impairment of the lower left extremity.<sup>17</sup> Based on the final impairment of class 1 grade D, he concluded that appellant had a two percent permanent impairment of the left leg.<sup>18</sup>

Dr. Zimmerman reviewed Dr. Laholt's report and applied the appropriate tables and grading schemes of the A.M.A., *Guides* to find that appellant had two percent permanent impairment of the lower left extremity.

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<sup>11</sup> *Supra* note 2 at 493-531.

<sup>12</sup> *Id.* at 521.

<sup>13</sup> *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>14</sup> *Supra* note 2.

<sup>15</sup> *Supra* note 4-6.

<sup>16</sup>  $((2-1) + (1-1) + (1-1) = 1)$ . *Supra* note 2.

<sup>17</sup> *Supra* note 2.

<sup>18</sup> *Id.*

Regarding the date of maximum medical improvement, the Board finds that OWCP properly relied on Dr. Zimmerman's determination that appellant reached MMI on July 18, 2013. Dr. Laholt based the date on Dr. Birch's April 26, 2013 report which advised that appellant had reached MMI. The report contained no other information. In a follow-up May 13, 2013 report, Dr. Birch stated that he was unable to provide a definitive diagnosis for a final impairment rating. The determination of the date for MMI ultimately rests with the medical evidence.<sup>19</sup> It is usually considered to be the date of the evaluation by the physician who is accepted as definitive by OWCP.<sup>20</sup> In this case it was Dr. Laholt's July 18, 2013 examination which was found definitive as to the extent of permanent impairment related to appellant's accepted injury.

Appellant has a two percent permanent impairment of the lower extremity. The date of MMI pertains to the date on which the schedule award will begin, not the amount of the award.<sup>21</sup> For complete or 100 percent impairment of a leg, a claimant is entitled to a maximum of 288 weeks of compensation. As appellant has two percent impairment of the left leg, she is entitled to two percent of 288 weeks of compensation or 5.76 weeks, which was the amount of compensation awarded in this case.<sup>22</sup> The Board finds that the date of maximum medical improvement was properly determined as July 18, 2013, based on the examination by Dr. Laholt.

Appellant may request an increased schedule award 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 established that she has more than a two percent permanent impairment of the lower left extremity for which she received a schedule award. The Board further finds that he reached maximum medical improvement on July 18, 2013.

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<sup>19</sup> *L.H.*, 58 ECAB 561 (2007).

<sup>20</sup> *Mark Holloway*, 55 ECAB 321, 325 (2004).

<sup>21</sup> *M.W.*, Docket No. 11-574 (issued October 21, 2011).

<sup>22</sup> See 5 U.S.C. § 8107(c)(2); 20 C.F.R. § 10.404.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs decision dated August 7, 2013 is affirmed.

Issued: January 24, 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