United States Department of Labor
Employees' Compensation Appeals Board

JOSE L. YZAGUIRRE, Appellant	)	
and	)	**Docket No. 03-1050**
	)	**Issued: April 20, 2004**
U.S. POSTAL SERVICE, POST OFFICE, McAllen, TX, Employer	)	

Appearances:
Jose L. Yzaguirre, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 18, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs schedule award dated February 14, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue on appeal is whether appellant has more than a two percent permanent impairment of the left lower extremity.

FACTUAL HISTORY

On April 2, 1999 appellant, then a 48-year-old-electronics technician, filed a traumatic injury claim alleging that on April 1, 1999 he injured his left knee when the lights went out and he walked into a table. Appellant stopped work on April 2, 1999 and returned on April 7, 1999. The Office accepted appellant's claim for left knee contusion, a tear of the posterior horn of the left medial meniscus and authorized a left knee arthroscopy.

In a November 27, 2000 operative report, Dr. Raul Marquez, a surgeon, advised that he performed arthroscopic surgery and provided postoperative diagnoses of a tear of the lateral meniscus and chondromalacia of the left knee. When describing the surgical findings, Dr. Marquez stated that the tibial plateau had chondromalacia which was Grade II-III, approximately 5 x 7 and a tear of the posterior horn of the medial meniscus. He indicated that the tear was shaved and made smooth along with the chondromalacia articular cartilage.

In a report dated February 13, 2001, Dr. Marquez determined that under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A. *Guides*), appellant sustained a tear of the medial meniscus which equaled a 10 percent impairment, plus 10 percent due to his chondromalacia, which equated to 20 percent of the lower extremity or an 8 percent whole person impairment. He also indicated that appellant had reached maximum medical improvement.

On February 16, 2001 appellant filed a claim for a schedule award.[1] In a March 12, 2001 report, the Office medical adviser noted that Dr. Marquez had recommended an impairment for chondromalacia under the fourth edition of the A.M.A., *Guides*, which did not address chondromalacia and was the wrong edition. He requested an impairment evaluation under the fifth, edition of the A.M.A., *Guides*.[2] By letter dated March 15, 2001, the Office requested the additional information from Dr. Marquez and in a March 26, 2001 report, the physician indicated that he would provide additional information when he received the fifth edition of the A.M.A., *Guides.*

The Office continued to develop the claim and received a February 12, 2002 magnetic resonance imaging (MRI) scan, read by Dr. Robert Rabiea, a Board-certified diagnostic radiologist, which demonstrated a small popliteal cyst and no evidence of meniscal tear.

In an April 15, 2002 report, Dr. Robert B. Fraser, a chiropractor, utilized the fifth edition of the A.M.A. *Guides* and determined that appellant had a meniscectomy of the left knee and reached maximum medical impairment on February 7, 2002.[3] He determined that per Table 17-33, appellant had a three percent whole person impairment.

On May 3, 2002 appellant filed another claim for a schedule award.

By report dated May 7, 2002, the Office medical adviser reviewed both the operative report and Dr. Fraser's April 15, 2002 report and determined that Dr. Fraser's findings were based on a figure used for a total meniscectomy, while the operative report indicated that appellant only had a partial meniscectomy. The Office medical adviser utilized Table 17-33 for diagnosis-based estimates and advised that appellant was entitled to a two percent impairment of the left lower extremity. He explained that the difference between Dr. Fraser's figure of seven

[1] Appellant retuned to full duty on February 14, 2001.

[2] A.M.A., *Guides* (5th ed. 2001).

[3] In the form report of medical evaluation, he indicated that appellant reached maximum medical improvement on April 15, 2002.

percent and his figure of two percent resulted from Dr. Fraser's incorrect use of the figure for a total meniscectomy.

On June 4, 2002 the Office granted appellant a schedule award for a 2 percent permanent impairment of the left lower extremity, for 5.76 weeks. By letter dated June 12, 2002, he requested a hearing. Appellant submitted a subsequent letter dated August 9, 2002, in which he maintained that he was entitled to an additional award and provided his own explanation of the calculations.[4]

At the hearing, held on November 21, 2002 appellant submitted an October 24, 2002 report, in which Dr. Ruben D. Pechero, a Board-certified orthopedic surgeon, noted that appellant came in for an evaluation due to continuous pain and discomfort. He noted appellant's past history which included an arthroscopy with lateral meniscectomy, debridement and chondroplasty. Examination demonstrated intact range of motion and good virus and valgus stability. The physician determined that appellant had a possible meniscal tear and recommended a reevaluation in terms of a repeat arthroscopy of the left knee. In an October 28, 2002 report, Dr. Fraser reiterated that appellant had a total meniscectomy of the left knee and that he had a seven percent lower extremity impairment.

In a February 14, 2003 decision, the Office hearing representative affirmed the June 4, 2002 decision finding that appellant had a two percent permanent impairment of the left lower extremity. The hearing representative noted the Office medical adviser's explanation that a partial meniscectomy equaled a two percent impairment under the A.M.A., *Guides*. He further noted that as Dr. Fraser is a chiropractor, he was not considered a "physician" under the Federal Employees' Compensation Act and thus his opinion was of no probative value as to appellant's knee condition.

LEGAL PRECEDENT

The schedule award provision of the Act[5] and its implementing regulation[6] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage 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 regulation as the appropriate standard for evaluating schedule losses.[7]

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[4] He also provide a worksheet showing different methods of calculating for impairment

[5] 5 U.S.C. §§ 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id.*

ANALYSIS

In the instant case, appellant has not provided probative medical evidence to establish that he has more than a two percent permanent impairment of the left lower extremity for which he received a schedule award. On appeal appellant alleged that based upon his interpretation of the A.M.A., *Guides* he was entitled to an additional award. However, appellant is not a physician as defined under the Act,[8] therefore, his argument concerning whether he was entitled to a greater award is irrelevant.

The medical evidence in support of his claim includes a February 13, 2001, report from Dr. Marquez, who indicated that appellant should receive an impairment rating of 20 percent of the lower extremity. However, in reaching this determination, Dr. Marquez used the fourth edition of the A.M.A., *Guides.* By letter dated March 15, 2001, the Office requested additional information under the appropriate fifth edition of the A.M.A., *Guides*.[9] Although Dr. Marquez indicated that he would provide a new impairment estimate, no further rating was provided.

Appellant subsequently provided an impairment rating from Dr. Fraser, a chiropractor, who determined that appellant should receive an impairment of the whole person of three percent. Section 8101(2) of the Act provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[10] As appellant's accepted injury was to his left knee and not his spine, the report of Dr. Fraser do not constitute probative medical evidence. The Board has held that a chiropractor is not a physician for the purposes of calculating a schedule award.[11] Therefore, Dr. Fraser's reports cannot be considered those of a physician and are of no probative value.

Appellant provided an October 24, 2002 report from Dr. Pechero. However, he did not provide a basis for any impairment rating or refer to specific tables in the A.M.A., *Guides.* Therefore, this report is also of diminished probative value.

In a May 7, 2002 report, the Office medical adviser stated that he had reviewed the operative report and determined that, in accordance with Table 17-33 of the fifth edition of the A.M.A., *Guides*,[12] appellant had been entitled to a two percent impairment of the left lower extremity due to his partial left knee meniscectomy, rather than a seven percent impairment for a total meniscectomy.

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[8] *See* 5 U.S.C. § 8101(2); *Sheila G. Peckenschneider*, 49 ECAB 430, 432 (1998); *Arnold A. Alley*, 44 ECAB 920-21 (1993).

[9] The fifth edition of the A.M.A., *Guides* became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*, even if the amount of the award was calculated prior to that date.

[10] 5 U.S.C. § 8101(2).

[11] *George E. Williams*, 44 ECAB 530 (1993).

[12] *Supra* note 9.

The Board finds that the Office medical adviser provided a reasoned opinion as to the degree of permanent impairment under the A.M.A., *Guides.* His report establishes that appellant has no more than a two percent impairment resulting from his work-related injury. The Office medical adviser properly determined that appellant was entitled to a two percent impairment of the left lower extremity. There is no probative medical evidence that appellant is entitled to a greater award.

CONCLUSION

The Board finds that appellant has not established that he sustained more than a two percent permanent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 14, 2003 is affirmed.

Issued: April 20, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member