United States Department of Labor
Employees' Compensation Appeals Board

JOHN P. CEDARS, Appellant	)	
and	)	**Docket No. 04-998**
	)	**Issued: December 22, 2004**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Midwest City, OK, Employer	)	

Appearances:
John P. Cedars, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 4, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated February 4, 2004, in which an Office hearing representative affirmed the denial of appellant's claim for a schedule award. Pursuant to 5 U.S.C. §§ 501.2(c) and 501.3, the Board has jurisdiction over the Office's schedule award decision.

ISSUE

The issue is whether appellant has an impairment of his left lower extremity of sufficient degree to entitle him to a schedule award under the Federal Employees' Compensation Act.

FACTUAL HISTORY

On November 23, 1994 appellant, a 48-year-old letter carrier, filed an occupational disease claim alleging that his bilateral joint disease in his knees and ankles was due to his employment.[1] The Office accepted the claim for aggravation of preexisting degenerative joint

[1] This was assigned claim number 16-251950.

disease in both knees on February 22, 1995.[2] Appellant accepted an offer of permanent reassignment in the carrier craft. The Office authorized left knee arthroscopic surgery, which occurred on August 28, 2001. Appellant received compensation for temporary total disability for the period August 28 through October 5, 2001.[3]

On October 15, 2001 appellant filed a claim for a schedule award.

In a January 21, 2002 report, Dr. Donald W. McGinnis, an attending Board-certified orthopedic surgeon, concluded that appellant had a five percent impairment of his left extremity due to "patellofemoral pain and crepitation without significant joint space narrowing on x-rays." In reaching this determination, the physician utilized Table 17-31 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.) (hereinafter A.M.A., *Guides*).

In a report dated April 4, 2002, the Office medical adviser reviewed the January 21, 2002 report by Dr. McGinnis and concluded that it was insufficient as the physician described "a fairly normal knee in general terms." The Office medical adviser also found that the report was insufficient to determine maximum medical improvement and permanent partial impairment.

In an October 1, 2002 report, Dr. McGinnis reported:

> "[Appellant] reached M[aximim] M[edical] I[mprovement] on January 21, 2002. At the time of his rating exam[ination] he had full extension, full flexion, no effusion of his knees, with good retention of his hamstring and quadriceps strength, and subpatellar crepitants. He had no joint line tenderness. He denied locking or catching in his knee. He did complain of crepitants and had some pain with kneeling and squatting."

In a January 8, 2003 report, the Office medical adviser reviewed Dr. McGinnis' October 1, 2002 report and concluded that appellant had reached maximum medical improvement on January 21, 2002. Based upon this report "and the fact that there is a well-maintained cartilage interval," he concluded that appellant had a zero percent permanent partial impairment of the left lower extremity.

In a decision dated February 3, 2003, the Office concluded that appellant was not entitled to a schedule award based upon the January 21 and October 1, 2002 reports of Dr. McGinnis and the January 8, 2003 report by the Office medical adviser.

Appellant disagreed with the February 3, 2003 decision and requested an oral hearing before an Office hearing representative on February 20, 2003.

A hearing was held on November 18, 2003 at which appellant testified and submitted a March 24, 2003 clinic note from Dr. McGinnis.

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[2] Appellant filed a second occupational disease claim on June 25, 1998 for his bilateral degenerative joint disease, which the Office determined was a duplicate of his November 23, 1994 claim.

[3] Appellant retired from the employing establishment in October 2001.

Dr. McGinnis, in a March 24, 2003 clinic note, reported "symmetric effusion and flexion" and a five centimeter effusion on physical examination. He also noted:

> "Tenderness to palpation over his medial joint line, lateral joint line, and peripatellar area. 1+ subpatellar crepitants. Negative Lachman's. Negative anterior/posterior drawer. Good varus/valgus stability. Flexion McMurray's gives him lateral sided knee pain."

In a decision dated February 4, 2004, the Office hearing representative affirmed the February 3, 2003 decision, which found appellant was not entitled to a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Act[4] and its implementing regulation[5] sets 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. However, the Act 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 regulation as the appropriate standard for evaluating schedule losses.[6]

Section 8123(a) of the Act[7] provides: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

ANALYSIS

In this case, Dr. McGinnis indicated, in a January 21, 2002 report, that appellant had a five percent permanent impairment of his left lower extremity due to "patellofemoral pain and crepitation without significant joint space narrowing on x-rays." In reaching this determination, Dr. McGinnis utilized Table 17-31 titled, "Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals." On April 4, 2002 the Office medical adviser determined that Dr. McGinnis' report was insufficient as Dr. McGinnis described a normal knee. Dr. McGinnis reported appellant had full flexion and extension of the knee and no effusion. The physician also noted that appellant complained of "crepitants and had some pain with kneeling and squatting." The Office medical adviser reviewed Dr. McGinnis' reports and concluded that appellant had a zero percent impairment of his left lower extremity. According to the A.M.A., *Guides*, arthritis "has its own diagnostic category which applies to individuals with documented arthritis who are

[4] 5 U.S.C. § 8107(a)-(c).

[5] 20 C.F.R. § 10.404.

[6] *See id. See also Mark A. Holloway*, 55 ECAB ___ (Docket No. 03-2144, issued February 13, 2004); *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

[7] 5 U.S.C. §§ 8101-8193, 8123(a).

impaired by pain, weakness or stiffness, but who have maintained functional ranges of motion. Arthritis is evaluated based on narrowing of the joint space as measured from x-rays."[8]

The Board finds that Dr. McGinnis' report does not conform with the A.M.A., *Guides* and is, therefore, of diminished probative value and cannot constitute the weight to the medical evidence or create a conflict with the Office medical adviser's report. Dr. McGinnis did not diagnose arthritis in his report and therefore the use of Table 17-31 to make an impairment determination was in error. In addition, he did not provide any finding of a cartilage interval as shown by x-ray and found no significant narrowing of the joint space by x-ray interpretation. Thus, the Board finds that Dr. McGinnis erred in using Table 17-31 as he did not diagnose arthritis and he did not apply the table correctly as no cartilage interval by x-ray was demonstrated. As the report of the Office medical adviser provided the only evaluation which conforms with the protocols of the A.M.A., *Guides*, his opinion constitutes the weight of the medical evidence.[9] As noted, the A.M.A., *Guides* has been adopted to provide for a single set of tables to achieve uniform standards applicable to all claimants. As there was no narrowing of the joint space as measured by x-ray, the Office medical adviser correctly determined appellant had no impairment of his left lower extremity. Therefore, the Office properly determined that appellant was not entitled to a schedule award as he had a zero percent impairment of the left lower extremity.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to a schedule award.

[8] A.M.A., *Guides* (5th ed. 2001) 525, section 17.2.

[9] *See Bobby L. Jackson*, 40 ECAB 593 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated February 4, 2004 is affirmed.

Issued: December 22, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member