

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

TIMOTHY W. GAUGHAN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Newport, RI, Employer**

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**Docket No. 04-1909
Issued: December 16, 2004**

Appearances:
David A. Salzillo, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 26, 2004 appellant filed a timely appeal from the April 29, 2004 merit decision of the Office of Workers' Compensation Programs denying his claim for a schedule award. Pursuant to 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 is entitled to a schedule award.

FACTUAL HISTORY

On March 19, 2002 appellant, then a 41-year-old letter carrier, filed an occupational disease claim alleging that he experienced constant pain in his left knee as a result of the walking, climbing and lifting duties of his federal employment. By letter dated June 25, 2002, the Office accepted his claim for an aggravation of left knee osteoarthritis.

On August 29, 2003 appellant filed a claim for a schedule award and submitted an August 8, 2003 report from Dr. John A. Froehlich, a treating Board-certified orthopedic surgeon.

He indicated that appellant sustained a prior injury to his left knee in 1981 while playing basketball and also in 2000, when his foot became caught in bedding while sleeping. Dr. Froehlich indicated that appellant was treated for these injuries and underwent reconstructive surgery for his anterior cruciate ligament (ACL) and menisci and a partial meniscectomy/debridement. He noted that appellant began complaining of persistent left knee discomfort throughout 2002, particularly with prolonged standing. Dr. Froehlich stated:

“[Appellant] suffers from post-traumatic arthritis to his left knee. I believe the best guide to the degree of impairment that he is provided in the [A.M.A., *Guides*] Table 17-31 with impairment based on radiographic degeneration. Using this guide, [appellant] has a 25 percent impairment of the lower extremity which corresponds to a 10 percent impairment of the whole person. He will be seen on a serial basis and ultimately I believe come to knee reconstruction in the form of total knee replacement, though this reconstructive procedure should be deferred to a later age because of issues related to loosening and wear in a younger aged population.”

On December 19, 2003 the Office referred the record to an Office medical adviser to determine whether he had any impairment of the left knee. In a report dated December 26, 2003, the Office medical adviser stated:

“Based on the medical record [appellant] suffers from post-traumatic arthritis of the left knee which dates to nonwork-related injuries in 1981 and 2000. The accepted condition by the [Office] should be considered a temporary aggravation and not the cause of the degenerative conditions which related to the ACL tear and meniscal tear. Therefore, the current residual impairments are not related to conditions of employment or the [Office] approved aggravation. The noted impairments are not related to a work-related injury. As of [August 8, 2003 appellant] has reached maximum medical improvement.”

By letter dated January 7, 2004, the Office referred appellant to Dr. Ira Singer, a Board-certified orthopedic, for a second opinion. On February 2, 2004 he diagnosed endstage osteoarthritis of the left knee. Dr. Singer indicated that, based on appellant’s history, he might not be able to return to his job which required a significant amount of walking and climbing. Based on appellant’s history, the physician stated that there was no direct causal relationship between a specific on-the-job injury and his current disability status. He noted, “If at one time there was significant aggravation to this underlying post-traumatic osteoarthritis, it has resolved and he has reached a baseline, which existed prior to any specific on[-]the[-]job injury.” He agreed with Dr. Froehlich’s conclusion that appellant had a 25 percent impairment of the left lower extremity based on the A.M.A., *Guides*, Table 17-31.

On April 22, 2004 the Office forwarded Dr. Singer’s report to the Office medical adviser. On April 27, 2004 the Office medical adviser noted that appellant had long-standing left knee problems. The Office medical adviser opined that, although an impairment rating could be reached based on the physical finding, these findings were unrelated to the factors of appellant’s employment. The medical evidence from Dr. Singer noted a resolved temporary aggravation of arthritis and was not related to the temporary aggravation.

By decision dated April 29, 2004, the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence.² Section 8107 of the Act provides that, if there is permanent disability involving the loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³ Under section 10.404 of the implementing regulation⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs.

ANALYSIS

The Office accepted appellant's claim for a temporary aggravation of left knee osteoarthritis. The record indicates that he had a long history of knee problems prior to the accepted work-related injury. Dr. Froehlich stated that appellant had a 25 percent impairment of the lower extremity, but did not explain how this impairment was causally related to the accepted aggravation. He noted that appellant had prior injuries to his knee in 1981 while playing basketball and in 2000 his leg was caught in the sheets of a bed. The Office medical adviser reviewed the evidence of record and concluded that appellant's current residual impairments were not related to the accepted employment-related aggravation of osteoarthritis. A second opinion physician, Dr. Singer provided findings on examination noting that there was no direct causal relationship between a specific on-the-job injury and appellant's current disability status. He stated that the accepted employment-related aggravation had resolved and that appellant returned to a baseline status which existed prior to any specific on-the-job injury. The Board finds that the weight of medical evidence does not establish that appellant is entitled to a schedule award for impairment of his left lower extremity. The medical evidence does not attribute any permanent impairment caused by his federal employment. Rather, the impairment of the left knee was caused by underlying osteoarthritis without any contribution from the employment,⁵ as the medical evidence establishes the employment-related aggravation resolved and appellant returned to his baseline status.

¹ 5 U.S.C. §§ 8101-8193.

² *Edward W. Spohr*, 54 ECAB ____ (Docket No. 03-1173, issued September 10, 2003); *Nathaniel Milton*, 37 ECAB 712 (1986).

³ 5 U.S.C. § 8107(a).

⁴ 20 C.F.R. § 10.404.

⁵ When employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition. See *Raymond W. Behrens*, 50 ECAB 221, 222 (1999).

CONCLUSION

Appellant has not established that he is entitled to a schedule award under the Act.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Worker's Compensation Programs dated April 29, 2004 is affirmed.

Issued: December 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member