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JOHN A. SOLESBEE, Appellant)	
)	
and)	Docket No. 04-82
)	Issued: February 13, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Charlotte, NC, Employer)	
)	

Case Submitted on the Record

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

On July 10, 1996 appellant then a 59-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee while in the performance of his federal duties. The Office accepted his claim for a left knee strain, left medial meniscus tear and authorized arthroscopic surgery that was performed on August 29, 1996. On July 1, 1999 appellant filed a notice of recurrence of disability that was accepted, together with the additional

condition of left knee osteoarthritis. In March 1999 appellant injured his back in a motor vehicle accident and thereafter applied for disability retirement on September 29, 1999.

On May 13, 2002 appellant submitted a Form CA-7 claim for a schedule award. In a June 20, 2002 letter, the Office requested additional information regarding appellant's left knee condition. In an October 15, 2002 letter from his representative, appellant indicated that his treating physician was not familiar with performing impairment rating evaluations and asked the Office to arrange for a referral physician who could perform the rating. On December 12, 2002 appellant was referred to Dr. Stephen Shaffer, a Board-certified orthopedic surgeon. In a January 31, 2003 report, Dr. Shaffer reviewed appellant's medical history and conducted a physical examination. He stated that appellant had chronic pain and swelling in his left knee that existed for a prolonged period of time. Appellant stated that, due to stiffness in his knee, he experienced difficulty while sitting and standing and that pain developed in his knee when he went up or down stairs or when walking on level ground. He indicated that the pain became severe at night and that it had been recommended to him that he undergo a knee replacement. Dr. Shaffer stated that x-rays revealed the left knee had a 35 to 40 percent medial compartment narrowing, with medial tibial plateau sclerosis and patellar periarticular osteophyte formation. On physical examination Dr. Shaffer found appellant's left knee had three-quarters inch of atrophy with 4/5 strength. Range of motion was restricted in extension from minus 15 degrees to 100 degrees of flexion. He indicated there was a slight parapatellar tenderness but no patellofemoral compression tenderness or pain, and slight medial joint line tenderness with a negative McMurray's test. Dr. Shaffer noted that there was a slight enlargement of the knee commensurate with a history of degenerative arthritis but not as much as one saw with appellant's chronicity. Dr. Shaffer did not provide an impairment rating as he concluded that appellant was not at maximum medical improvement.

In a February 26, 2003 decision, the Office, relying on Dr. Shaffer's report, found that appellant was not entitled to a schedule award because maximum medical improvement had not been reached.

Appellant requested a review of the written record by the Office's Branch of Hearings and Review. In a July 28, 2003 decision, an Office hearing representative found that Dr. Shaffer's report was not fully rationalized and remanded the case for a supplemental opinion or impairment from Dr. Shaffer.

In an August 18, 2003 report, Dr. Shaffer addressed the issue of maximum medical improvement, stating that appellant "has medial compartment narrowing and complicating osteoarthritis which will progress to require knee implant surgery at a future date -- time frame unknown."

In a September 9, 2003 decision, the Office denied a schedule award, finding that the medical evidence did not establish that he was at maximum medical improvement.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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. 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

Before the A.M.A., *Guides* may be utilized, however, the record must contain medical evidence describing a claimant's permanent impairment. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation must include "a detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member of function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment." This description must be in sufficient detail so that the claims examiner and other reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁴

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of his employment injury. Maximum improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.⁵ The determination of maximum medical improvement is not to be based on surmise or prediction of what may happen in the future.⁶ A schedule award is appropriate where the physical condition of an injured member has stabilized, despite the possibility of an eventual change in the degree of functional impairment in the member.⁷

The Office is not a disinterested arbiter but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on the Office to see that its administrative processes are

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ See *id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁴ Federal (FECA) Procedure Manual, Part -- 2 Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (March 1995). See *John H. Smith*, 41 ECAB 444, 448 (1990); *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

⁵ *Adela Hernandez-Piris*, 35 ECAB 839 (1984); *James T. Rogers*, 33 ECAB 347 (1981).

⁶ See *Delmer Jones*, 28 ECAB 39 (1976); *Donald Stecky, Jr.*, 13 ECAB 522 (1962).

⁷ *Santo Panzica*, 15 ECAB 458 (1964).

impartially and fairly conducted.⁸ Although the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.⁹ Once the Office starts to develop the medical opinion evidence, it must do so in a fair manner.¹⁰ The Office has the responsibility to obtain from a referral physician an evaluation that will resolve the issue involved in the case.¹¹

ANALYSIS

In the present case, the Office hearing representative found that Dr. Shaffer's January 31, 2003 report was not fully rationalized and remanded the case for further development on the issue of maximum medical improvement. In an August 18, 2003 supplemental report, Dr. Shaffer stated that appellant "has medial compartment narrowing and complicating osteoarthritis which will progress to require knee implant surgery at a future date -- time frame unknown." It is not clear from this single sentence response whether Dr. Shaffer found that appellant's medical condition had stabilized or if he is predicting it will improve after implant surgery at some future date. Dr. Shaffer did not provide a reasoned opinion on maximum medical improvement, as was requested by the Office. As noted, the determination of maximum medical improvement is not to be based on surmise or prediction of what may happen in the future. A schedule award is appropriate where the physical condition of an injured member has stabilized, despite the possibility of an eventual change in the degree of functional impairment to the member. As appellant is several years beyond his last surgery and has retired, it is reasonable to obtain a rationalized medical opinion on whether appellant's left knee has stabilized. The Office referred appellant to Dr. Shaffer and obtained an incomplete medical opinion. The Board has long held that, although the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.¹² Once the Office starts to procure medical opinion, it must do so in a fair manner.¹³ The Office has the responsibility to obtain from a referral physician an evaluation that will resolve the issue involved in the case.¹⁴ In the present case, the Office has not met that responsibility.

⁸ *Thomas M. Lee*, 10 ECAB 175 (1958).

⁹ *William J. Cantrell*, 34 ECAB 1233 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁰ *William N. Saathoff*, 8 ECAB 769 (1956).

¹¹ *Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983); *Richard W. Kinder*, 32 ECAB 863, 866 (1981) (noting that the report of the Office referral physician did not resolve the issue in the case).

¹² *William J. Cantrell*, *supra* note 9; *Gertrude E. Evans*, *supra* note 9.

¹³ *William N. Saathoff*, *supra* note 10.

¹⁴ *Mae Z. Hackett*, *supra* note 11; *Richard W. Kinder*, *supra* note 11.

CONCLUSION

The Board finds that the Office failed to obtain a rationalized opinion on whether appellant's knee has stabilized and whether maximum medical improvement has been reached. The case will be remanded for further development of the record.

ORDER

IT IS ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 26 and September 9, 2003 are set aside and the case be remanded to the Office for further development consistent with this opinion.

Issued: February 13, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member