United States Department of Labor
Employees' Compensation Appeals Board

F.C., Appellant	)	
and	)	**Docket No. 08-1406**
	)	**Issued: November 7, 2008**
U.S. POSTAL SERVICE, POST OFFICE, New Haven, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 15, 2008 appellant filed a timely appeal from a January 10, 2008 merit decision of the Office of Workers' Compensation Programs granting him a schedule award for a 12 percent impairment of his right lower extremity. 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 has more than a 12 percent impairment of his right lower extremity for which he was granted a schedule award.

FACTUAL HISTORY

Appellant, a 50-year-old special delivery messenger, filed a traumatic injury claim on May 20, 2005 alleging that he sustained a right knee injury on that date while making a delivery. The Office accepted the claim for an anterior cruciate ligament (ACL) tear; medial and lateral meniscus tears of the right knee; and ACL sprain. On September 7, 2005 appellant underwent authorized surgery, involving: a right knee arthroscopy with ACL reconstruction using allograft;

partial medial and lateral meniscectomies; and chondroplasties of the patellofemoral joint and the medial and lateral femoral condyles.

On December 26, 2007 appellant requested a schedule award. In support of his request, he submitted a report dated April 24, 2007 from Dr. Dante A. Brittis, a Board-certified orthopedic surgeon, who provided an impairment rating for appellant's right lower extremity. Dr. Brittis stated that appellant still had occasional aching pain and areas of numbness anteriorly as a result of his ACL reconstruction. He noted that x-rays revealed no significant degenerative joint disease on the right side. Examination of the right knee showed trace effusion and joint line tenderness. Range of motion was 0 to 115 degrees. Lachman's was stable and his calf was soft. Dr. Brittis opined that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[1] appellant had a 16 percent impairment of his right lower extremity.

The case record was referred to the district medical adviser, along with a statement of accepted facts, for review and an impairment rating. In a report dated December 31, 2007, the medical adviser found that appellant had a 12 percent impairment of his right lower extremity. Pursuant to Dr. Brittis' April 24, 2007 report, he noted that there was no evidence of instability and trace effusion in the right knee. Based upon his examination findings, he stated that appellant was not entitled to a schedule award for early degenerative joint disease or for range of motion pursuant to Table 17-9 on page 537 of the A.M.A., *Guides.* Referring to Table 17-33 at page 546 of the A.M.A., *Guides*, the medical adviser concluded that appellant had a 10 percent impairment of his right lower extremity for partial medial and lateral meniscectomies. He also opined that appellant had an additional 2 percent impairment for pain, for a total right lower extremity impairment of 12 percent. On January 5, 2008 the medical adviser opined that the date of maximum medical improvement was April 24, 2007, the date of Dr. Brittis' evaluation.

By decision dated January 10, 2008, the Office granted appellant a schedule award for a 12 percent permanent impairment of his right lower extremity. The period of the award was from April 24 to December 21, 2007. The Office found that the date of maximum medical improvement was April 24, 2007.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] sets forth the number of weeks of compensation to be paid for permanent loss or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[3] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be

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

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 5 U.S.C. § 8107(c)(19).

determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* as the standard to be used for evaluating schedule losses.[4]

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from the attending physician is obtained.[5] For lower extremity impairments due to meniscectomies or ligament injuries involving the knees, Table 17-1, of the A.M.A., *Guides* directs the clinician to utilize section 17.2j as the appropriate method of impairment assessment. Section 17.2j of the A.M.A., *Guides*, entitled "Diagnosis-Based Estimates," provides that some impairment estimates are more appropriately rated on the basis of a diagnosis than on the basis of findings on physical examination and instructs the clinician to assess the impairment using the criteria in Table 17-33, entitled "Impairment Estimates for Certain Lower Extremity Impairments."[6]

When a diagnosis-based impairment rating is applied, it is generally not appropriate to calculate additional impairment based on anatomic or functional based methods (such as limitations of strength or range of motion).[7] Section 18.3b of Chapter 18 at page 571 of the fifth edition of the A.M.A., *Guides* provides that examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the A.M.A., *Guides.*[8]

ANALYSIS

The Office accepted appellant's claim for an ACL tear; medial and lateral meniscus tears of the right knee; and ACL sprain. Appellant subsequently underwent authorized surgery, involving: a right knee arthroscopy with ACL reconstruction using allograft; partial medial and lateral meniscectomies; and chondroplasties of the patellofemoral joint and the medial and lateral femoral condyles. In his April 24, 2007 report, Dr. Brittis stated that appellant still had occasional aching pain and areas of numbness anteriorly as a result of his ACL reconstruction. He noted that x-rays revealed no significant degenerative joint disease on the right side. Examination of the right knee showed trace effusion and tenderness. Range of motion was 0 to 115 degrees. Lachman's was stable and his calf was soft. Dr. Brittis opined that appellant had a 16 percent impairment of his right lower extremity pursuant to the A.M.A., *Guides*. However, he did not explain the basis for his impairment rating; nor did he identify the applicable sections or Tables of the A.M.A., *Guides* to support his conclusion. Therefore, appellant's opinion is of limited probative value.

[4] 20 C.F.R. § 10.404.

[5] *Thomas J. Fragale*, 55 ECAB 619 (2004).

[6] A.M.A., *Guides* 545; *see James R. Hill*, 57 ECAB 583 (2006).

[7] *Id*. at 545, section 17.2j; *Derrick C. Miller*, 54 ECAB 266 (2002).

[8] *Id*. at 545, section 18.3b. *See L.H.*, 58 ECAB ___ (Docket No. 06-1691, issued June 18, 2007) (the impairment ratings in the body organ system chapters of the A.M.A., *Guides* make allowance for any accompanying pain). *See also T.H.*, 58 ECAB ___ (Docket No. 06-1500, issued January 31, 2007).

The Office properly referred the case to the district medical adviser for review.[9] The medical adviser correctly concluded that appellant had a 10 percent impairment of his right lower extremity for partial medial and lateral meniscectomies, pursuant to Table 17-33 at page 546 of the A.M.A., *Guides*. He properly found that appellant was not entitled to a schedule award for early degenerative joint disease or for range of motion pursuant to Table 17-9 on page 537. However, he incorrectly determined that appellant had an additional two percent impairment due to pain. This Board has held that examiners should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in others chapters of the A.M.A., *Guides*.[10] The medical adviser did not fully evaluate, with medical rationale, the calculation of a two percent right lower extremity impairment based on pain and did not explain why appellant's pain-related impairment could not be adequately addressed by applying Chapter 17 of the A.M.A., *Guides*, which addresses lower extremity impairment.

There is however no rationalized medical opinion evidence conforming with the A.M.A., *Guides*, which supports that appellant has more than a 12 percent impairment of his right lower extremity. Therefore, appellant has not established entitlement to a schedule award for more than a 12 percent impairment of his right lower extremity.

CONCLUSION

The Board finds that appellant has no more than a 12 percent impairment of his right lower extremity, for which he received a schedule award.

[9] Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from the attending physician is obtained. Federal (FECA Procedure manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002); *Thomas J. Fragale*, *supra* note 5.

[10] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); A.M.A., *Guides* 571, 18.3(b); *L.H.*, *supra* note 8; *P.C.*, 58 ECAB ___ (Docket No. 07-410, issued May 31, 2007); *T.H.*, *supra* note 8; *Frantz Ghassan*, 57 ECAB 349 (2006).

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board