United States Department of Labor
Employees' Compensation Appeals Board

W.R., Appellant	)	
and	)	**Docket No. 08-1684**
	)	**Issued: May 20, 2009**
DEPARTMENT OF THE AIR FORCE, HICKAM AIR FORCE BASE, HI, 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 June 2, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 22, 2008. 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 nine percent impairment of each of his upper extremities for which he received schedule awards.

FACTUAL HISTORY

On May 23, 2001 appellant, then a 48-year-old mechanic, filed a traumatic injury claim alleging that on May 1, 2001 he was walking down some steps and fell at the bottom step injuring his right hand, shoulder and knee. The Office initially denied appellant's claim on September 12, 2001. Appellant requested an oral hearing. By decision dated July 21, 2002, the hearing representative accepted appellant's claim for right knee meniscus tear due to the employment injury. In a letter dated August 27, 2002, the Office informed appellant that his

claim had been accepted for right knee meniscal tear and repair. Appellant underwent a right knee arthroscopy and partial medial meniscectomy with excision of super medial plica on October 18, 2002.[1] The Office authorized left knee surgery on March 6, 2004. On May 18, 2004 appellant underwent an arthroscopy and partial medial meniscectomy. The Office accepted that appellant sustained bilateral knee medial cartilage tear with repairs and left knee strain.

On December 7, 2006 appellant requested a schedule award.[2] He again requested a schedule award on October 15, 2007. In a note dated November 2, 2007, appellant's attending physician, Dr. Ronald Gackle, Board-certified in preventative medicine, diagnosed bilateral knee pain and bilateral groin tenderness and opined that appellant had reached maximum medical improvement. The Office requested additional medical opinion evidence from Dr. Gackle by letter dated January 10, 2008. It referred appellant for a second opinion on April 15, 2008 to determine his permanent impairment for schedule award purposes.

In a report dated May 1, 2008, Dr. Bernard M. Porter, Board-certified in physical medicine and rehabilitation, noted appellant's history of injury and findings on examination. He noted that appellant had atrophy of both thighs measuring 46 centimeters (cm) on the right and 47 cm on the left. Manual muscle testing revealed weakness of both quadriceps. Dr. Porter found that both of appellant's knees demonstrated full range of motion with pain and laxity of the anterior cruciate ligament. He examined x-rays of appellant's knee in standing weight-bearing position which revealed bilateral loss of the medial joint compartment joint space of approximately 50 percent. The Office referred this report to the district medical adviser on May 9, 2008.

Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, reviewed the evidence of record on May 16, 2008 and found that appellant had two percent impairment bilaterally due to the partial medial meniscectomies. He also found that appellant had mild degenerative joint disease resulting in seven percent impairment. Dr. Harris combined these figures to reach an impairment rating of nine percent impairment of each lower extremity. He found that appellant had reached maximum medical improvement on July 6, 2005.

By decision dated May 22, 2008, the Office granted appellant schedule awards for nine percent impairment of each of his lower extremities.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[4] set forth the number of weeks of compensation payable to employees

[1] Appellant has a separate claim number xxxxxx210 due to an injury on July 12, 1999 which was accepted for right wrist strain, right hand tenosynovitis, trigger finger and bilateral carpal tunnel syndrome.

[2] Appellant received a schedule award for 24 percent impairment of each of his upper extremities on July 18, 2005 in claim number xxxxxx210.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

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 regulations as the appropriate standard for evaluating schedule losses.[5] Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[6]

ANALYSIS

The Office accepted appellant's claim for bilateral meniscal tears and surgeries. Appellant's attending physician, Dr. Gackle, Board-certified in preventative medicine, opined that appellant had reached maximum medical improvement beginning in November 2007. However, he failed to provide detailed findings or any rating impairment. The Office referred appellant to Dr. Porter, Board-certified in physical medicine and rehabilitation for a second opinion evaluation. In his May 1, 2008 report, Dr. Porter reported thigh atrophy, weakness of the quadriceps and loss of medial joint compartment space based on standing x-rays. Dr. Harris, a Board-certified orthopedic surgeon, and Office medical adviser, reviewed this report on May 16, 2008 and found that appellant had two percent impairment[7] bilaterally due to his partial medial meniscectomies in accordance with the A.M.A., *Guides*. He reviewed Dr. Porter's finding that appellant had 50 percent loss of joint space in the knees based on standing x-rays and concluded that appellant had a cartilage interval of three millimeters or 7 percent impairment due to mild degenerative joint disease as demonstrated by x-ray.[8] Dr. Harris properly combined these impairment ratings to reach a total of nine percent impairment of each lower extremity.[9]

Dr. Harris provided the only correlation of physical findings with the appropriate sections of the A.M.A., *Guides*, and he properly applied the A.M.A., *Guides* to reach his impairment rating. As there is no other medical evidence establishing more than nine percent impairment of appellant's lower extremities, the Office properly granted appellant schedule awards based on this impairment rating.

CONCLUSION

The Board finds that the medical evidence in the record does not establish that appellant has more than nine percent impairment of each of his lower extremities for which he has received a schedule award.

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[5] *Id.*

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

[7] A.M.A., *Guides* 446-47, Table 17-33.

[8] *Id.* at 544, Table 17-31.

[9] *Id.* at 526, Table 17-2.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2009
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