United States Department of Labor
Employees' Compensation Appeals Board

L.O., Appellant	)	
and	)	**Docket No. 10-1955**
	)	**Issued: April 7, 2011**
DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, Miami, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 22, 2010 appellant filed a timely appeal from the May 11, 2010 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 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 left leg.

FACTUAL HISTORY

On August 29, 1992, appellant, then a 40-year-old criminal investigator, injured his left knee in the performance of duty when he stepped in a hole. The Office accepted his claim for left cruciate ligament sprain and a torn posterior cruciate ligament mid substance with

[1] 5 U.S.C. §§ 8101-8193.

impingement of a portion of the ligament within the lateral compartment. Appellant underwent posterior cruciate ligament reconstruction.

Appellant filed a claim for a schedule award. His orthopedic surgeon, Dr. John W. Uribe, rated a 25 percent whole-body impairment and stated the percentage could be found in Table 16-1, page 495 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). The Office informed appellant that the Act did not compensate whole-body or whole-person impairment ratings. It set forth specific information Dr. Uribe needed to provide to support appellant's schedule award claim, including a detailed description of the impairment and a discussion of the rationale for calculating the impairment with references to the applicable criteria in the A.M.A., *Guides*. The Office noted that Dr. Uribe should refer to pages 28 to 30 of the A.M.A., *Guides* for specific information required in the report.

Dr. Uribe subsequently found that appellant had reached maximum medical improvement. Citing Table 16-3, page 509 of the A.M.A., *Guides*, he rated appellant's impairment: "[Appellant] has been left with a partial permanent impairment to the left knee of 12 percent. This is a result of his knee dislocation which occurred in November 1992, while on active duty."

An Office medical adviser noted that appellant had a posterior cruciate ligament reconstruction and medial collateral ligament repair with mild expectant laxity, pain and arthritis. Using Table 16-3, page 510 of the A.M.A., *Guides*, an Office medical adviser agreed with Dr. Uribe's 12 percent rating of the left leg. Dr. Uribe noted that functional history and physical examination revealed a mild problem, while clinical studies showed a moderate pathology.

On May 11, 2010 the Office granted a schedule award for a 12 percent impairment of the left lower limb. It awarded appellant 34.56 weeks of compensation for this impairment.

On appeal, appellant argues that his schedule award ($42,415.74) was negligible. He notes that the injury impacted his life physically and mentally.[2]

[2] Appellant requested an oral argument. On August 25, 2010 the Clerk of the Board advised him that oral arguments were held only in Washington, DC, and that the Board was not responsible for travel or other incidental expenses related to attending. The Board asked appellant to confirm by September 9, 2010 whether he still desired the oral argument and informed him that it would decide the appeal on the record without oral argument if he did not respond. The Board received no response.

LEGAL PRECEDENT

Section 8107 of the Act[3] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[4]

The Act provides a maximum 288 weeks of compensation for the total loss of a leg, as with amputation at the hip.[5] Compensation for partial loss is proportionate.[6]

ANALYSIS

Diagnosis-based impairment is the primary method of evaluating the lower limb. Impairment is determined first by identifying the relevant diagnosis, then by selecting the class of the impairment (no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss), which will provide a default impairment rating, and finally by adjusting the default rating up or down for grade, which is calculated using grade modifiers or nonkey factors (functional history, physical examination, clinical studies).[7]

Dr. Uribe, the attending orthopedic surgeon, offered an impairment rating due to knee dislocation. He cited a table, a page number and a class (mild problem) in the A.M.A., *Guides*, but offered no explanation for this rating.

It appears that Dr. Uribe based his rating on a diagnosis of ruptured tendon. Appellant did not have a ruptured tendon, but this is the only diagnosis on page 509 of the A.M.A., *Guides* that will support a 12 percent impairment rating other than partial medial and lateral meniscectomy, which also does not relate to his case.

The default impairment rating for a Class I ruptured tendon is 10 percent, but only if appellant has a moderate motion deficit or significant weakness. Dr. Uribe offered no findings on physical examination to support this classification. It does not appear that he based his impairment rating on any current examination. To adjust the default rating upward to 12 percent, Dr. Uribe would need to attribute the adjustment to a moderate problem reflected in appellant's current functional history, physical examination or clinical studies. He reported none of these.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition of the A.M.A., *Guides*. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.0808.6.a (January 2010).

[5] 5 U.S.C. § 8107(c)(2).

[6] *Id*. at § 8107(c)(19).

[7] A.M.A., *Guides* 497.

The Board must, therefore, find that Dr. Uribe's impairment rating has no value in determining appellant's entitlement to a schedule award.

The Office medical adviser agreed with Dr. Uribe's rating, but without a current examination of appellant's left lower limb for the purpose of evaluating impairment due to the 1992 employment injury, the rating is flowed. He noted, inaccurately, that appellant had a posterior cruciate ligament reconstruction and medial collateral ligament repair. The surgical record indicates only the ligament reconstruction was performed.

The Office medical adviser classified the impairment as mild, or one that involves mild laxity, but he did not identify the source of this finding. Impairment due to a ligament injury is defined by the presence and extent of any laxity in the joint. A review of appellant's medical record shows a gap between 1993, when he was seen in follow-up for his reconstructive surgery and 2009, when he was seen for left knee tricompartmental degenerative joint disease. His recent medical record makes no mention of ligamentous laxity.

The Office medical adviser adjusted the default impairment rating of 10 percent for a moderate pathology shown on clinical studies, but again did not identify the source of this information. It may be that a clinical study in 1992 or 1993 or more recently shows a moderate pathology, but the Board is unable to confirm the adjustment without specific information.

Further development of the medical evidence is warranted. The Board will set aside the Office's May 11, 2010 decision and remand the case for further development to determine the extent of any impairment resulting from appellant's 1992 employment injury. If the degenerative joint disease currently diagnosed in appellant's left knee is causally related to the 1992 incident in which he stepped into a hole and ruptured his posterior cruciate ligament, the evaluation of his impairment must account for it. Following such further development may become necessary, the Office shall issue an appropriate final decision on his schedule award claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this opinion of the Board.

Issued: April 7, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board