

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

S.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Riverdale, IL, Employer**

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**Docket No. 11-1089
Issued: November 1, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 29, 2011 appellant timely appealed the October 27, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which granted a schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)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 two percent impairment of the right leg.

FACTUAL HISTORY

Appellant, a 56-year-old letter carrier, has an accepted claim for right knee sprain, which arose on August 20, 2009. On February 5, 2010 he underwent a right knee partial lateral meniscectomy which OWCP authorized. Appellant received wage-loss compensation and

¹ 5 U.S.C. §§ 8101-8193.

returned to work without restrictions on May 3, 2010. He subsequently filed a claim for a schedule award (Form CA-7).

On May 24, 2010 OWCP asked Dr. Kevin C. Tu, a Board-certified orthopedic surgeon, to provide an impairment rating of the right lower extremity under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008). The letter included a four-page worksheet for determining right knee impairment under the A.M.A., *Guides*. Dr. Tu completed and returned the worksheet on June 3, 2010² but did not provide a specific impairment rating for the lower extremity. He noted right knee pain of 5 out of 10. Dr. Tu also noted that appellant had difficulty walking greater than three blocks. Regarding range of motion, appellant's knee flexion was 140 degrees bilaterally, with 150 degrees representing normal. Dr. Tu also noted normal extension bilaterally (zero degrees) and no ankylosis. Additionally, appellant had no weakness, no ligament instability and no varus or valgus deformity of the knee. Dr. Tu further noted that appellant had a partial meniscectomy with a stable rim remaining. He estimated that appellant had 25 percent loss of shock absorption following the meniscectomy. Dr. Tu reported no loss of leg length and no need for prosthetic devices. Regarding evidence of post-traumatic irregularity or arthritis, he noted medial compartment chondromalacia. Lastly, Dr. Tu reported that appellant reached maximum medical improvement on May 3, 2010.

OWCP referred the case to Dr. David H. Garelick, a Board-certified orthopedic surgeon and district medical adviser. In a report dated July 5, 2010, Dr. Garelick found two percent impairment of the right lower extremity based on appellant's February 5, 2010 partial lateral meniscectomy.³ He referenced the April 28, 2010 treatment notes of Dr. Tu and noted a paucity of complaints and a normal physical examination.

On July 22, 2010 OWCP granted a schedule award for two percent impairment of the right lower extremity. The award covered a period of 5.76 weeks from May 1 through June 10, 2010.

Appellant requested a review of the written record. By decision dated September 28, 2010, an OWCP hearing representative set aside the July 22, 2010 schedule award. OWCP's hearing representative noted that Dr. Garelick had not referenced the June 3, 2010 right knee impairment worksheet prepared by Dr. Tu.

On remand, Dr. Garelick reviewed the record, including Dr. Tu's June 3, 2010 worksheet, and rated two percent impairment of the right lower extremity. In his October 4, 2010 report, he explained that, while the June 3, 2010 report suggested ongoing complaints not previously noted, the physical examination remained essentially normal.

² Dr. Tu is a Board-certified orthopedic surgeon. He had previously examined appellant on April 28, 2010 and released him to resume work without restrictions. At that time, Dr. Tu noted that appellant "really [had] no complaints with respect to his right knee." He reported range of motion from 0 to 135 degrees, no joint line tenderness, no tenderness with circumduction maneuvers, no laxity, 5/5 quad strength and normal sensation.

³ Table 16-3, Knee Regional Grid (LEI), A.M.A., *Guides* 509.

In a decision dated October 27, 2010, OWCP found that appellant had two percent impairment of the right lower extremity.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁴ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁶

ANALYSIS

Appellant argued that OWCP should have awarded 25 percent impairment based on Dr. Tu's June 3, 2010 report. Dr. Tu estimated there was 25 percent loss of shock absorption following appellant's meniscectomy. Contrary to appellant's assertion, Dr. Tu did not indicate that appellant had 25 percent impairment.

Lower extremity impairment is covered by Chapter 16 of the A.M.A., *Guides* (6th ed. 2008). Dr. Garelick reviewed the record, including the reports of Dr. Tu and found two percent impairment of the right lower extremity. Under Table 16-3, A.M.A., *Guides* 509, a partial medial or lateral meniscectomy represents a class one impairment for the diagnosed condition (CDX) with a default grade of two percent lower extremity impairment.

After determining the impairment class and default grade, Dr. Garelick determined if there were any applicable grade adjustments for nonkey factors or modifiers. These include adjustments for Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁷ The grade modifiers are used in the net adjustment formula to calculate a net adjustment.⁸ The final impairment grade is determined by adjusting the grade up or down from the default value by the calculated net adjustment. Dr. Garelick found a grade zero modifier for GMPE, a grade 1 modifier for GMCS and a grade 2 modifier for GMFH. Applying the net adjustment formula resulted in no adjustment from the default grade of two percent.⁹

⁴ For a total loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

⁵ 20 C.F.R. § 10.404.

⁶ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁷ See Table 16-5, Table 16-6, Table 16-7 and Table 16-8, A.M.A., *Guides* 515-17, 519-20.

⁸ Net Adjustment = (GMFH – CDX) + (GMPE – CDX) + (GMCS – CDX). Section 16.3d, A.M.A., *Guides* 521.

⁹ Net Adjustment (0) = GMFH (2) – CDX (1) + GMPE (0) – CDX (1) + GMCS (1) – CDX (1).

The Board finds that Dr. Garelick's October 4, 2010 impairment rating conforms to the A.M.A., *Guides* (6th ed. 2008) and represents the weight of the medical evidence as to appellant's right leg impairment. Appellant has not submitted any credible medical evidence indicating that he has a greater impairment than previously awarded.

CONCLUSION

Appellant has not established that he has greater than two percent impairment of the right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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