United States Department of Labor
Employees' Compensation Appeals Board

K.D., Appellant	)	
and	)	**Docket No. 07-1585**
	)	**Issued: December 14, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 23, 2007 appellant timely appealed the Office of Workers' Compensation Programs' December 11, 2006 and April 2, 2007 merit decisions regarding his entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a two percent impairment of the right and left lower extremities, for which he received schedule awards.

FACTUAL HISTORY

On May 8, 2003 appellant, then a 53-year-old air mail facility distribution clerk, filed an occupational disease claim alleging that his bilateral knee condition was due to factors of his federal employment. The Office accepted his claim for internal derangement of the right knee and bilateral torn medial menisci and paid appropriate benefits. Appellant underwent left knee

surgery for a partial medial meniscectomy on January 6, 2004 and right knee surgery involving partial medial meniscectomy on April 20, 2004. He also underwent additional right knee surgery on January 14, 2005 for a partial medial meniscectomy and chondroplasty. Appellant returned to part-time limited-duty work on July 21, 2005 and full-time limited-duty work on January 24, 2006. By decision dated April 11, 2006, the Office found an overpayment of compensation.[1] By decision dated May 26, 2006, the Office found that appellant's actual earnings in his modified distribution clerk position effective January 24, 2006 represented his wage-earning capacity.[2]

Appellant subsequently requested a schedule award. In a September 20, 2005 medical report, Dr. John J. DeBender, a Board-certified orthopedic surgeon and appellant's attending physician, advised that appellant's bilateral knee conditions were at maximum medical improvement and that he could return to work for eight hours a day. In a September 28, 2005 report, Dr. DeBender advised that appellant underwent partial medial meniscectomies and chondroplasties of both knees. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), Dr. DeBender determined that appellant had a total four percent impairment to his lower extremities. Based on Table 17-33, page 546 of the A.M.A., *Guides*, Dr. DeBender found a two percent impairment based on the partial medial meniscectomy performed on each lower extremity.

On April 27, 2006 the Office forwarded the case file to an Office medical adviser for an opinion on the degree of permanent impairment of appellant's right and left legs. In a May 15, 2006 report, the Office medical adviser concluded that the date of maximum medical improvement was September 20, 2006. He noted that he reviewed the statement of accepted facts and the medical evidence. Based on Table 17-33, page 546 of the A.M.A., *Guides* and Dr. DeBender's reports, the Office medical adviser agreed that appellant had a two percent right lower extremity impairment and a two percent left lower extremity impairment based on the partial medial meniscectomies.

By decision dated December 11, 2006, the Office granted appellant a schedule award for a two percent right lower extremity impairment and a two percent left lower extremity impairment. The award was for a period of 11.52 weeks, from August 6 to October 25, 2006.

In a December 26, 2006 letter, appellant requested reconsideration of the Office's December 11, 2006 decision. He stated that his impairment was more severe than the two percent granted for each knee. Appellant noted that he did not question the impairment rating as he thought he would become more mobile without the lingering effects of pain. No additional medical evidence was submitted.

By decision dated April 2, 2007, the Office denied modification of its December 11, 2006 decision.

[1] As this decision was issued more than a year before appellant filed his appeal on May 23, 2007, the Board does not have jurisdiction to review the overpayment decision. 20 C.F.R. § 501.2(c).

[2] Appellant has not appealed the Office's May 26, 2006 wage-earning capacity decision.

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 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5]

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from his physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[6]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[7]

ANALYSIS

The Office accepted that appellant sustained an internal derangement of the right knee and bilateral tears of medial meniscus and authorized surgery. Appellant requested a schedule award. In his September 28, 2005 report, appellant's treating physician, Dr. DeBender, utilized a diagnostic-based estimate in concluding that appellant sustained two percent impairment to his right leg and two percent impairment to his left leg based upon the partial medial meniscectomies to each knee.

An Office medical adviser reviewed Dr. DeBender's findings and agreed with his determination that appellant had two percent impairment to each lower extremity due to partial medial meniscectomy.[8] The Board finds that the findings of Dr. DeBender and the Office

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id.*

[6] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

[8] A.M.A., *Guides* 546, Table 17-33.

medical adviser comport with the A.M.A., *Guides* and neither physician noted a basis for greater impairment. The Board notes that as Dr. DeBender found no range of motion, sensory or neurological deficits. There is no medical evidence which attributes greater permanent impairment to appellant's lower extremities. While appellant has stated his belief that he is entitled to a greater schedule award, he did not submit any medical evidence, conforming to the A.M.A., *Guides*, supporting greater impairment. The Board finds that appellant has no more than two percent impairment of the right leg and two percent impairment of the left leg.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2007 and December 11, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 14, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board