United States Department of Labor
Employees' Compensation Appeals Board

I.P., Appellant	)	
and	)	**Docket No. 10-541**
	)	**Issued: October 26, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 22, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decisions dated November 3 and 16, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determinations.

ISSUE

The issue is whether appellant has more than a 15 percent permanent impairment of his right leg or more than a 12 percent permanent impairment of his left leg, for which he received schedule awards.

FACTUAL HISTORY

This case was previously on appeal before the Board.[1] In a decision dated September 4, 2009, the Board found that the case was not in posture for decision. The Board found that the

[1] Docket No. 08-2187 (issued September 4, 2009).

reports of the treating physician, Dr. Daisy A. Rodriguez, a Board-certified internist, and the Office medical adviser did not comport with the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (5th ed. 2001) in addressing the extent of permanent impairment of each leg. The Board set aside the Office's July 9, 2008 decision and remanded the case for a second opinion examination. The facts of the case, as set forth in the prior decision, are incorporated by reference.

On September 17, 2009 the Office referred appellant for a second opinion, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Robert Draper, a Board-certified orthopedic surgeon.

In a report dated October 2, 2009, Dr. Draper described appellant's history of injury and treatment and examined appellant. He utilized the A.M.A., *Guides* (6th ed. 2009) and noted that appellant was 60 pounds overweight. Dr. Draper determined that appellant had crepitus in the right knee. He determined that there was full extension and 135 degrees of flexion. Dr. Draper also noted that valgus and varus stress testing of the right knee revealed no instability. He found that there was no medial or lateral joint line tenderness and no effusion in the right knee. For the left knee, Dr. Draper determined that appellant had full extension and 135 degrees of flexion. He indicated that valgus and varus stress testing of the left knee revealed no instability. Dr. Draper noted there was no effusion in the left knee. For both knees the anterior drawer, posterior drawer and Lachman's signs were negative. Dr. Draper diagnosed osteoarthritis of the right and left knee and advised that appellant reached maximum medical improvement. Pursuant to Table 16-3, Knee Regional Grid-Lower Extremity Impairment,[2] appellant would fall into a Class 1 impairment for mild primary knee joint osteoarthritis. Dr. Draper advised this would translate to a Grade C or seven percent impairment to each lower extremity. He noted that the net adjustment formula was (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[3] Dr. Draper advised that this would equate to a net adjustment of minus two with grade modifiers of zero for physical examination and clinical studies. He utilized the net adjustment formulas and determined the Class 1, Grade A impairment for the lower extremities, incorporating a net adjustment of minus two, represented a five percent impairment for both the right and left lower extremities.

In an October 6, 2009 report, Dr. Rodriguez noted appellant's status and findings. She did not address permanent impairment under the sixth edition of the A.M.A., *Guides*.

By letter dated October 14, 2009, the Office asked the Office medical adviser to review Dr. Draper's report. On October 29, 2009 the Office medical adviser agreed with Dr. Draper's rating of five percent impairment for the right and left lower extremity using the sixth edition of the A.M.A., *Guides*.

On November 3, 2009 the Office denied appellant's claim for an additional schedule award.

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[2] A.M.A., *Guides* 509-11.

[3] *Id*. at 521.

On November 8, 2009 the Office medical adviser clarified his prior report and noted that appellant had pain in both knees. He explained that the x-rays were "unremarkable" with no evidence of arthritic changes. The Office medical adviser noted that MRI scan studies of the right knee demonstrated mild osteoarthritis and that MRI scan studies of the left knee also demonstrated mild osteoarthritis with degenerative change of the medial meniscus. The x-rays of both knees dated February 26, 2008 revealed mild degenerative changes with the x-rays of June 14, 2007 revealed no degenerative changes. The most recent MRI scan study of the right knee of April 9, 2009 revealed a small Bakers' cyst, no meniscal tear, and minimal chondromalacia of the patella or osteoarthritis. The Office medical adviser noted that there was no instability and full flexion of the right knee to 135 degrees and full extension, good ligamentous stability, no effusion. The Office medical adviser advised that the left knee revealed identical findings. He referred to page 511 of the A.M.A., *Guides* to determined that primary knee joint arthritis was the most appropriate diagnosis. The Office medical adviser advised that this was a Class 1, which was described as a three-millimeter cartilage interval, full thickness articular cartilage defect or un-united osteochondral fracture, default value Grade C, seven percent impairment with a range of five to nine percent. He utilized the adjustment grid and grade modifiers at page 516, Table 16-6: Functional History Adjustment, Lower Extremities, a grade modifier of one was appropriate, with mild deficit. According to page 517, Table 16-7: Physical Examination Adjustment, Lower Extremities, under knee, stable, with normal alignment and normal range of motion, no atrophy, no limb length discrepancy would represents a grade modifier of zero. Under page 519, Table 16-8: Clinical Studies Adjustment, Lower Extremities, grade modifier of zero as noted by Dr. Draper. The Office medical adviser utilized the net adjustment formula and determined that the net adjustment was minus two. However, he opined that a grade modifier of one for clinical studies was appropriate under Table 16-8, which would make the net adjustment minus one rather than minus two as applied by Dr. Draper. This would correlate to six percent impairment for both the right and left legs. The Office medical adviser opined that appellant reached maximum medical improvement on October 2, 2009.

In a November 16, 2009 decision, the Office denied appellant's claim for an additional schedule award. It found that the medical evidence did not support an increase in the impairment already compensated.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees Compensation Act,[4] and its implementing federal regulations,[5] 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id*. at § 10.404(a).

to calculate schedule awards.[7] For decisions issued after May 1, 2009, the sixth edition will be used.[8]

In addressing lower extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).[9] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[10]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides,* with the Office medical adviser providing rationale for the percentage of impairment specified.[11]

ANALYSIS

The Board previously found that the reports of the treating physician, Dr. Rodriguez, and an Office medical adviser did not rate impairment on conformance with the A.M.A., *Guides.* The case was remanded for referral to a second opinion physician.

In an October 2, 2009 report, Dr. Draper, the second opinion physician, noted appellant's history, listed findings on examination and rated permanent impairment. The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.[12] Appellant's accepted condition is aggravation of degenerative arthritis of both knees. Dr. Draper's findings for both knees were essentially identical and included full extension, 135 degrees of flexion and no instability or effusion. Table 16-3 of the sixth edition of the A.M.A., *Guides*, Knee Regional Grid, provides that primary knee joint arthritis can be classified from Class 0 to Class 4, with Class 1 defined as a three-millimeter cartilage interval, full thickness articular cartilage defect or ununited osteochondral fracture.[13] Dr. Draper found that Class 1 primary knee joint arthritis best characterized appellant's condition. He advised that the default rating would translate to seven percent impairment for each leg. Dr. Draper then applied the grade modifiers described in Tables 16-6 through 16-8 and the net adjustment formula.[14] He advised that this would equate to a net adjustment of minus two which included grade modifiers of zero for physical examination

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[7] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[8] FECA Bulletin No. 09-03 (issued March 15, 2009).

[9] A.M.A., *Guides* 494-531; *see J.B*., 61 ECAB ____ (Docket No. 09-2191, issued May 14, 2010).

[10] A.M.A., *Guides* 521.

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

[12] *Supra* note 9.

[13] *Id*. at 511.

[14] *See id*. at 515-21.

and clinical studies. Dr. Draper utilized the net adjustment formula and determined the Class 1, Grade A impairment for the lower extremities, with a net adjustment of minus two, would equate to five percent impairment for each leg.

On October 29, 2009 the Office medical adviser concurred with Dr. Draper, however, in a November 8, 2009 report, he found that appellant had six percent impairment of each leg. He noted the grade modifiers used by Dr. Draper and explained that additional impairment of one percent was warranted based on application of Table 16-8: Clinical Studies Adjustment, Lower Extremities.[15] The Office medical adviser noted that while Dr. Draper used a zero grade modifier for clinical studies he felt that a grade modifier of one was appropriate. It would therefore correlate to a net adjustment of minus one rather than minus two as suggested by Dr. Draper.[16] The Board notes that using a grade modifier of one for clinical studies under Table 16-8 is appropriate as the clinical findings noted by the medical adviser are consistent with a confirmed arthritis diagnosis and mild pathology. Other grade modifiers used by Dr. Draper and the Office medical adviser are consistent with the A.M.A., *Guides* as Dr. Draper noted minimal examination findings and appellant's functional history was consistent with a mild problem. Thus a net adjustment of minus one to the Grade C, or default, rating of seven percent impairment for Class 1 (mild) primary knee joint arthritis in Table 16-3 moves the grade one position to the left to Grade B for which six percent impairment is given.

The Board finds that the Office medical adviser's November 8, 2009 report properly applies Dr. Draper's findings to the A.M.A., *Guides,* and establishes that appellant has no more than six percent impairment of each leg under the sixth edition of the A.M.A., *Guides*. As appellant previously received a schedule award for a 15 percent permanent impairment of his right lower extremity and a 12 percent permanent impairment of his left lower extremity, he has not established impairment greater than that previously awarded.

On appeal, appellant's representative contends that Dr. Rodriguez' opinion was sufficient to create a conflict in the medical evidence. As noted in the prior appeal, Dr. Rodriguez' opinion was found of reduced probative value as it did not follow the A.M.A., *Guides.* His more recent October 6, 2009 report does not address permanent impairment pursuant to the A.M.A., *Guides.* The opinion of Dr. Rodriguez is insufficient to establish impairment greater than that previously awarded.[17]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he has more than 15 percent permanent impairment of his right leg and more than 12 percent permanent impairment of his left leg, for which he received schedule awards.

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[15] *Id.* at 519.

[16] Under the net adjustment formula, *supra* note 10, of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), Dr. Draper found (1-1) + (0-1) + (0-1) = -2. The Office medical adviser found that (1-1) + (0-1) + (1-1) = -1.

[17] *See John D. Jackson*, 55 ECAB 465 (2004) (a simple disagreement between two physicians does not, of itself, establish a conflict; to constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 16 and 3, 2009 are affirmed.

Issued: October 26, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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