U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD W. GAJTKOWSKI and U.S. POSTAL SERVICE, POST OFFICE, Belmar, NJ

Docket No. 02-1429; Submitted on the Record;
Issued January 21, 2004

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether appellant has more than a 23 percent impairment of the right lower extremity, for which he received a schedule award.

On February 10, 1995 appellant, then a 52-year-old mail clerk, filed an occupational disease claim for degenerative arthritis of both knees which he attributed to factors of his federal employment. He stopped work on February 14, 1995. Appellant's claim was accepted by the Office of Workers' Compensation Programs for an aggravation of bilateral degenerative arthritis of the knees and surgery was approved for a left total knee replacement. On May 1, 1995 appellant returned to work as a label clerk performing sedentary, light-duty work. He received appropriate compensation for 432 hours of leave used from February 14 to April 30, 1995.[1]

On February 5, 2001 appellant, through counsel, requested a schedule award and submitted the November 30, 2000 report of Dr. Nicholas Diamond, an attending osteopath, who reviewed appellant's history, including severe osteoarthritis of both knees for which appellant underwent arthroscopic surgeries of both knees and a left knee total replacement. He noted appellant's complaint of intermittent left and right knee pain and provided his findings on physical examination. The right knee revealed portal arthroscopic scarring with patellar tenderness and crepitance noted. Isolated testing of the quadriceps musculature was graded as 4+/5 with positive valgus and varus stress testing. Range of motion of the right knee revealed flexion-extension of 0-100/140 degrees, with pain at extremes. Examination of the left knee revealed portal arthroscopic scars with an 18 centimeter total knee replacement scar. Dr. Diamond noted patellar tenderness, quadriceps atrophy with strength testing graded 4/5. Valgus and varus stress testing was positive with range of motion of the left knee in flexion-

[1] In a November 29, 1995 report, Dr. Frank A. Mattei, an orthopedic surgeon, conducted an examination of appellant at the request of the employing establishment. Dr. Mattei opined that, under the fourth edition of the A.M.A., *Guides*, appellant had a 15 percent impairment of the left knee for total knee replacement and a 20 to 25 percent impairment of the right knee for arthritis based cartilage interval loss.

extension of 0-100/140 degrees. Sensor examination did not reveal any abnormalities of the lower extremities. Based on the fourth edition of the A.M.A., *Guides*, Dr. Diamond found left knee impairment of 50 percent based on pain and loss of range of motion. For the right lower extremity, Dr. Diamond found range of motion impairment of 10 percent, motor strength deficit of 12 percent and medial/lateral ligament laxity of 17 percent. He stated that appellant reached maximum medical improvement as of the date of his evaluation.

On April 17, 2000 an Office medical adviser reviewed Dr. Diamond's medical report to apply the fifth edition of the A.M.A., *Guides*. He agreed that appellant had a 50 percent impairment of the left lower extremity due to a total knee replacement with fair results.[2] For the right knee, the medical adviser rated appellant's impairment under Table 17-31, page 544, entitled arthritis impairments based on roentgenographically determined cartilage intervals. He noted that Dr. Mattei had estimated a 20 to 25 percent impairment for cartilage loss, which the Office medical adviser used "since it pretty much comes to same defect or the loss of motion and weakness reported by Dr. Diamond." The medical adviser noted that there was "some" cartilage loss on x-ray, which had not been measured, but allowed an "average" of 23 percent to represent the impairment to appellant's right knee.

On April 24, 2001 the Office granted schedule awards for appellant's bilateral knee conditions. The Office found 50 percent impairment of the left lower extremity and 23 percent impairment of the right lower extremity. The period of the awards ran for 210.24 weeks.

On May 3, 2001 appellant, through counsel, requested a hearing before an Office hearing representative, which was held on October 30, 2001. At the hearing, counsel noted that appellant did not contest the extent of impairment of the left lower extremity and that the issue was the extent of impairment to his right lower extremity. Following the hearing, appellant submitted a revised copy of Dr. Diamond's November 30, 2000 report, which found a combined total of 34 percent impairment of the right lower extremity based on the deficits described in the original report.

In a January 24, 2002 decision, the Office hearing representative affirmed the April 24, 2001 schedule award, finding a 23 percent impairment of the right lower extremity.

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

The schedule award provisions of the Federal Employees' Compensation Act and its implementing federal regulation set forth the number of weeks of compensation payable to employees who sustain permanent impairment from loss or loss of use of scheduled members or functions of the body.[3] The Act does not specify the manner in which the percentage of loss shall be determined. However, 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

[2] Table 17-33, page 546-7 is titled impairment estimates for certain lower extremity impairments. It allows a 50 percent impairment rating of the lower extremity for a total knee replacement with fair results.

[3] *See* 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

all claimants.[4] In this regard, FECA Bulletin No. 01-5, issued January 29, 2001, directed that all claims examiners and hearing representatives use the fifth edition of the A.M.A., *Guides* for all schedule award decisions effective February 1, 2001.

As relevant to this appeal, FECA Bulletin No. 01-5 provides that in making an impairment rating for the lower extremities, different evaluation methods cannot be used in combination. For example, arthritis impairments obtained from Table 17-31 cannot be combined with impairment determinations based on gait derangement (Table 17-5); muscle atrophy (Table 17-6); muscle strength (Tables 17-7 and 17-8) or range of motion loss (section 17.2f). Before finalizing any physical impairment calculation, the Office medical adviser is to verify the appropriateness of the combination of evaluation methods with that listed in Table 17-2, the cross-usage chart.

Dr. Diamond calculated a total of 34 percent impairment of the right lower extremity based on the fourth edition of the A.M.A., *Guides.* This estimate was comprised of 10 percent for loss of right knee motion;[5] 12 percent for loss of motor strength;[6] and 17 percent for loss of medial/lateral collateral ligament laxity.[7] Applying the Combined Values Chart to these losses would result in a total of 34 percent impairment. However, the calculations of Dr. Diamond are of reduced probative value for two reasons. First, The 17 percent loss allowed for collateral ligament laxity was derived under Chapter 3.2i, for diagnosis-based estimates. The introductory materials to this section note that in making an evaluation the "physician must determine whether diagnostic or examination criteria best describe the impairment of a specific patient. *The physician, in general, should decide which estimate best describes the situation and should use only one approach for each anatomic part."* (Emphasis in the original.) Dr. Diamond did not provide any discussion pertaining to this section or explain why he combined the diagnosis based estimate for impairment of collateral ligament laxity with the examinations based criteria for motion loss and strength deficit. Second, it is not readily apparent that the fifth edition of the A.M.A., *Guides* has continued the use of several of the tables from the fourth edition which were relied upon by Dr. Diamond in making his impairment estimate.

The Office medical adviser concluded that appellant had 23 percent impairment of the right lower extremity. However, in making this rating, the medical adviser also failed to properly apply the A.M.A., *Guides*. Rather than addressing the impairments identified by Dr. Diamond, the medical adviser referred back to a 1995 evaluation by Dr. Mattei to make an impairment rating based on cartilage loss. The medical adviser stated that he was applying Table 17-31 of the fifth edition, page 544. The roentgenographic grading system for arthritis at section 17.2h notes that for most people with arthritis, the grading system is "a more objective

[4] 20 C.F.R. § 10.404.

[5] Table 41, page 78, A.M.A., *Guides*, (4th ed. 1993) provides 10 percent lower extremity impairment for mild flexion impairment.

[6] Table 39, page 77, A.M.A., *Guides*, (4th ed. 1993) provides 12 percent impairment lower extremity impairment for muscle weakness of the knee due to extension loss which is Grade 4.

[7] Table 64, page 85, A.M.A., *Guides*, (4th ed. 1993) provides 17 percent lower extremity impairment for collateral ligament laxity which is rated as moderate.

and valid method for assigning permanent impairment estimates than physical findings, such as the range of motion or joint crepitation." In using this system, the estimate for the patellofemoral joint is to be based on a "sunrise view" taken at 40 degrees flexion or on a true lateral view." The medical adviser merely noted that Dr. Mattei had found "some" cartilage loss on x-ray, without any measurement of specific millimeters loss of the cartilage interval or indicating whether a "sunrise view" of the joint was obtained. The Office medical adviser rated appellant's right lower extremity impairment by allowing an "average" of the 20 to 25 percent range made by Dr. Mattei. As this impairment estimate clearly does not conform with the protocols of the A.M.A., *Guides*, the Board finds that the Office medical adviser's impairment rating is also of diminished probative value.

The Board finds that the medical evidence of record does not provide a probative medical opinion on the nature and extent of permanent impairment to appellant's right lower extremity. The Board will set aside the January 24, 2002 decision of the Office and remand the case for further development of the medical evidence, as appropriate, to be followed by a *de novo* decision on appellant's right lower extremity impairment.

The January 24, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside. The case is remanded to the Office for further action in conformance with this decision.

Dated, Washington, DC
January 21, 2004

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member