

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

DAVID J. DEUBLE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 05-173
Issued: August 18, 2005**

Appearances:
David J. Deuble, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On October 21, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated September 15, 2004, which granted a schedule award for a 22 percent impairment of his left lower extremity and a 24 percent impairment of the right lower extremity, for which he had already received a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether appellant has more than a 22 percent impairment of his left lower extremity and more than a 24 percent impairment of his right lower extremity.

¹ The Office issued a nonmerit decision in this case on October 18, 2004 which appellant did not identify when he filed his appeal of the September 15, 2004 Office merit decision. It will not be revised in the present appeal to the Board. See 20 C.F.R. § 501.3(c).

FACTUAL HISTORY

Appellant, then a 38-year-old letter carrier, filed a claim for injury on April 11, 1994 caused by his regular work duties. He filed a claim for recurrence of disability on May 7, 1995 and physical therapy was authorized for the period May 20 through June 9, 1995. On August 16, 1995 the Office noted that appellant's claim had been accepted for a torn right medial meniscus and arthroscopic surgery, for which he received a schedule award for a 24 percent impairment.² This claim was closed on April 1, 1997.

On September 10, 2003 appellant filed a Form CA-1, claim for traumatic injury on September 9, 2003 claiming that his left knee popped. The Office accepted his claim for work-related left knee strain. On September 16, 2003 x-rays of appellant's knees demonstrated complete loss of the medial joint line space of the right knee and almost complete loss of the medial joint line space of the left knee. His history was noted to be consistent with a left meniscal tear and increasing osteoarthritis. Dr. Leonard J. Buck, a Board-certified orthopedic surgeon, noted that appellant's left knee started to improve after five days of treatment with steroids, but that he still experienced weakness. In a September 9, 2003 form report, he indicated that appellant could return to light work on September 11, 2003.

In a Form CA-2, claim for occupational disease, dated September 29, 2003, appellant alleged that he injured his right knee in March 1994, returned to full duty in August 1994 and in September 2003 he had a recurrence while walking his route. He described his occupational injury as a torn meniscus. The Office assigned this claim No. 09-2039754 and again it requested more comprehensive medical information.

In a November 24, 2003 magnetic resonance imaging (MRI) scan, Dr. Robert D. Boutin, a Board-certified radiologist, diagnosed minimal medial collateral ligament scarring/sprain without discrete tear, subtle chondromalacia in the medial compartment, minimal effusion, but no meniscus tear detected. In a November 25, 2003 medical note, Dr. Buck determined that the MRI scan showed left knee chondromalacia and effusion but no meniscus tear. Appellant's right knee was also noted to be severely arthritic.

By note dated January 15, 2004, Dr. Buck stated that, due to the job duties appellant had to perform on a daily basis, he has sustained a probable medial meniscus tear in the right knee.

On January 23, 2004 the Office accepted that appellant sustained a medial meniscus tear in the right knee.

By letters dated February 27 and April 22, 2004, the Office advised appellant of the medical evidence he needed to provide to be eligible to receive schedule awards for both lower extremities. On February 5, 2004 Dr. Buck performed left and right knee arthroscopies. Regarding the left knee, he also performed extensive chondroplasty of the medial femoral condyle, removal of anteromedial synovial shelf and small partial posterior torn medial

² This first claim was No. 09-388891, but was closed on April 1, 1997. Thereafter appellant filed two workers' compensation claims, the primary one was assigned No. 092038400, (left knee) and the secondary one was numbered No. 092039754, (right knee). These cases were combined on appeal under master file No. 092038400.

meniscectomy. Regarding the right knee, Dr. Buck performed removal of the floating debris, removal of the medial parapatellar plica, extensive chondroplasty of the medial femoral condyle and microfracture repair of the medial femoral condyle.

Appellant was released to return to work on March 5, 2004 without restrictions. Based on a recommendation from Dr. Buck, the Office referred him to Dr. S.S. Purewal, a Board-certified orthopedist, for an impairment rating and opinion on the date of maximum medical improvement and percentage of impairment affecting each lower extremity.

In a report dated June 2, 2004, Dr. Purewal noted that appellant was working without specific restrictions and that, in January 1996, he had been rated with a 24 percent impairment of his right lower extremity. He noted that appellant currently complained of intermittent pain at the anteromedial aspect of his right knee, but had no locking or giving out. Appellant also experienced feelings of tightness in the left knee with pain at the posterior aspect. Dr. Purewal noted that, when standing, appellant had varus alignment of both knees, more pronounced on the right than the left. He noted that his right knee had no gross muscular atrophy, but had 6 degrees of varus alignment and full extension of the knee with active flexion up to 110 degrees. Dr. Purewal also noted that appellant's medial joint line was tender, that he had mild laxity of the medial collateral ligament, but that cruciate ligaments were stable, with no gross effusion in the joint and no gross crepitus. He indicated that the left knee revealed 3 degrees of varus deformity but full extension and flexion was up to 115 degrees. Dr. Purewal noted mild tenderness at the medial joint line and had stable ligaments, without effusion or gross crepitation at the left knee. Weight-bearing x-rays were noted as demonstrating moderate narrowing of the medial compartment on the right and mild narrowing of the medial compartment on the left, with some spurring of the patella. Dr. Purewal opined that appellant had reached maximum medical improvement as of March 20, 2004 when he returned to work. Using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Table 17-10 on page 537, appellant had no impairment of the right lower extremity related to loss of range of motion, 20 percent impairment of the right lower extremity due to the varus deformity of 6 degrees and, using Table 17-33 on page 546, there was a 7 percent impairment of the right lower extremity related to the medial meniscectomy. He added these impairment values to find a 27 percent impairment of the right lower extremity.

Dr. Purewal also noted that, using Table 17-10 on page 537 for the left lower extremity, appellant had no impairment based on loss of range of motion, a 20 percent impairment of the left lower extremity due to the 3 degree varus deformity of the knee and applying Table 17-33 on page 546, he found a 2 percent impairment of the left lower extremity due to a partial medial meniscectomy and debridement of the cartilage. He stated that this totaled a 22 percent impairment of the left lower extremity.

On June 14, 2004 appellant filed a Form CA-7 claim for a schedule award.

On August 23, 2004 an Office medical adviser noted that the date of maximum medical improvement was March 20, 2004 and provided his calculations of impairment based on the findings of Dr. Purewal. The Office medical adviser opined that appellant's right lower extremity partial medial meniscectomy was a 2 percent impairment according to Table 17-33, page 546; the 6 degree varus deformity of the right knee was a 20 percent impairment according

to Table 17-10, page 537; that range of right knee motion was 0 percent impairment according to Table 17-10, page 537. He used the Combined Values Chart to find a total impairment of 22 percent which was less than the amount previously determined and for which appellant received an award. The Office medical adviser opined that his left lower extremity partial medial meniscectomy was a 2 percent impairment according to Table 17-33, page 546; the 3 degree varus deformity at the left knee was a 20 percent impairment according to Table 17-10, page 537; and that range of left knee motion resulted in no impairment according to Table 17-10, page 537. He used the Combined Values Chart to find left lower extremity impairment of 22 percent. Dr. Hennessey noted that Dr. Purewal indicated that there was joint space narrowing on both the left and right radiographs, but that a numerical measurement of the cartilage interval was not provided. He noted that, if substantial narrowing was present, this might increase appellant's impairment rating and that, if such information was provided, a new impairment evaluation would be appropriate.

By decision dated September 15, 2004, the Office granted appellant a schedule award for a 22 percent impairment of his left lower extremity. It also found that he had been previously granted a schedule award for a 24 percent impairment of the right lower extremity under claim No. 09-388891 and that his present 22 percent impairment rating was less than that previously granted.

Appellant requested reconsideration, contending that he had a 27 percent permanent impairment of his right lower extremity and that, since the prior schedule award was for 24 percent, he was due an award for an additional 3 percent. He based this rating on Dr. Purewal's findings. Appellant resubmitted evidence that had been previously considered by the Office.

By decision dated October 18, 2004, the Office declined to reopen appellant's case for further review on its merits, finding that the evidence submitted in support was repetitive and irrelevant and did not warrant a reopening of his case for further review on its merits.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act³ provides that, if there is permanent disability involving the loss or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the impairment of the scheduled member or function. It is, thus, the claimant's burden of establishing that he sustained a permanent impairment of a scheduled member or function as a result of her employment injury.⁴

³ 5 U.S.C. § 8107.

⁴ 5 U.S.C. § 8107(a). See *Raymond E. Gwynn*, 35 ECAB 247 (1983) (addressing schedule awards for members of the body that sustained an employment-related permanent impairment); *Philip N.G. Barr*, 33 ECAB 948 (1982) (indicating that the Act provides that a schedule award be payable for a permanent impairment resulting from an employment injury).

The schedule award provision of the Act⁵ and its implementing regulation⁶ sets 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 fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁷

The Office's Procedure Manual provides that the Office should advise any physician evaluating permanent impairment to use the A.M.A., *Guides* and to report findings in accordance with those guidelines. The procedure manual notes that some objective and subjective impairments, such as pain, atrophy, loss of sensation and scarring, cannot easily be measured by the A.M.A., *Guides*, but that the effects of any such factors should be explicitly considered along with measurable impairments and correlated as closely as possible with factors set forth in the A.M.A., *Guides*.⁸

ANALYSIS

In this case, the Board finds that appellant had no more than a 22 percent impairment of left and right lower extremities for which he received schedule awards.

As a result of his April 11, 1994 right lower extremity injury, appellant was granted a schedule award for a 24 percent right lower extremity impairment. On September 9, 2003 appellant sustained further injury to both lower extremities, manifested by popping of his knees. X-rays demonstrated complete loss of the medial joint line space of the right knee and an almost complete loss of the medial joint line space of the left knee. Appellant underwent bilateral surgeries for meniscal tears and was released to work on March 5, 2004 without restrictions.

Appellant was referred to Dr. Purewal, who evaluated him for an impairment rating and determined that he had 6 degrees of right knee varus alignment with full extension and flexion up to 110 degrees. He found no gross muscular atrophy, a tender medial joint line, mild laxity of the medial collateral ligament, but that cruciate ligaments were stable and no gross effusion in the joint or gross crepitus. Dr. Purewal determined that, due to the 6 degree varus deformity, appellant had a 20 percent impairment, according to A.M.A., *Guides*, Table 17-10, page 537. He opined that using the A.M.A., *Guides*, Table 17-33 and adding the 7 percent for a medial meniscectomy to his preexisting impairment, appellant had a total 27 percent impairment of the right lower extremity or a 3 percent increase in impairment from the 24 percent right lower

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part -- 2, Claims, *Schedule Awards and Permanent Disability Claims*, Chapter. 2.808, paragraph 7 and 8 (August 2002).

extremity impairment previously determined. Dr. Purewal also referred to the A.M.A., *Guides*, Table 17-10, page 537, to determine that appellant's left lower extremity also had a 20 percent impairment due to 3 degrees of varus deformity of the left knee. The Board notes that the 20 percent impairment ratings of appellant's bilateral lower extremities for varus deformities is substantiated under the A.M.A., *Guides* at Table 17-10. Dr. Purewal's application of Table 17-33, page 546, to rate the lower extremity impairment due to the partial meniscectomy as seven percent impairment, however, is incorrect.

The Office medical adviser determined that Dr. Purewal had used the incorrect rating from the A.M.A., *Guides*. The Board notes that he rated appellant as having a total right medial meniscectomy a 7 percent impairment, when actually he underwent a partial medial meniscectomy, for which a 2 percent impairment rating is provided. Applying the Combined Values Chart this results in a 22 percent impairment of his right lower extremity.

As for the left lower extremity, appellant's rating of 22 percent impairment was appropriate under the Combined Values Chart for 20 percent impairment due to varus deformity and 2 percent impairment for the partial medial meniscectomy. There is no further probative medical evidence that appellant has greater than a 22 percent impairment of each of his lower extremities. As he was granted an award for a 24 percent impairment of his right lower extremity, an amount greater than his demonstrated current impairment, he is not entitled to an additional schedule award. Appellant properly received a schedule award for the 22 percent impairment of his left lower extremity.

CONCLUSION

The Board notes that, under Table 17-12, the rating for the varus impairment under Table 17-10 may not be combined with any possible rating for arthritis.

The Board finds that appellant has no more than a 22 percent impairment of the left lower extremity and a 24 percent impairment of the right lower extremity, for which he received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation dated September 15, 2004 is affirmed

Issued: August 18, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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