United States Department of Labor
Employees' Compensation Appeals Board

KENNETH L. SAUNDERS, Appellant	)	
	)	
and	)	**Docket No. 06-229**
	)	**Issued: March 13, 2006**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Greensboro, NC, Employer	)	

Appearances:
Kenneth L. Saunders, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 8, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated March 23, 2005, adjudicating his schedule award claim and October 18, 2005, denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the March 23 and October 18, 2005 decisions.

ISSUES

The issues are: (1) whether appellant has more than a 40 percent impairment of his right lower extremity; and (2) whether the Office properly denied his request for further merit review of his claim.

FACTUAL HISTORY

On October 2, 2002 appellant, then a 47-year-old mail processor, filed an occupational disease claim alleging that he sustained a recurrence of disability causally related to his May 30,

1995 employment injury.[1] The Office developed his claim as a new occupational injury. The Office accepted his claim for a right knee sprain and aggravation of right knee osteoarthritis. On August 6, 2003 appellant underwent surgery consisting of debridement of the right lateral femoral condyle with partial lateral meniscectomy and debridement of chondromalacia of the patella and femoral trochlea. On December 8, 2003 appellant filed a claim for a schedule award.

In a November 17, 2003 report, Dr. John L. Graves, an attending orthopedic surgeon, provided findings on physical examination and stated:

> "Regarding [appellant's] [impairment] rating, I would give him an additional 5 percent to the right lower extremity status post knee arthroscopy with debridement of degenerative joint disease, in particular, [G]rade [4] changes on the lateral femoral condyle. I believe he was rated with a 20 percent [permanent impairment] previously for his ACL [anterior cruciate ligament] deficiency and I feel he has an additional 5 percent impairment added on top of that for the arthroscopy and significant arthritic changes within his right knee joint."

In a December 31, 2003 memorandum, an Office medical adviser, stated that the additional 5 percent impairment calculated by Dr. Graves for arthroscopy and debridement of the knee was not provided for in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition.[2]

By decision dated June 29, 2004, the Office denied appellant's claim for an additional schedule award for right lower extremity impairment. Appellant requested a hearing. By decision dated November 23, 2004, an Office hearing representative remanded the case for further medical development and instructed that the case file for appellant's 1995 right knee injury be combined with his 2003 file.[3]

In a March 1, 2005 report, Dr. William A. Somers, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on physical examination and diagnosed post-traumatic degenerative arthritis of the right knee, persistent and progressive since the 1995 employment injury. He stated:

> "[Appellant's] right knee does not come into full extension when standing. He is tender about the medial and lateral joint line on the right. There is lateral joint and patellofemoral crepitus on the right compared to the left. He has no more than trace effusion on the right. There is pain medially with varus and valgus

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[1] The Office accepted a right knee meniscus tear as a result of the May 30, 1995 employment injury and granted appellant a schedule award for an 18 percent impairment of the right lower extremity by decision dated September 12, 1996. On December 9, 1998 the Office granted an additional schedule award for a two percent impairment of the right lower extremity.

[2] A.M.A., *Guides* (5th ed. 2001).

[3] The record shows that the Office was still attempting to locate the case file for the 1995 injury as of December 17, 2004.

stress on the right, no pain on the left and no evident instability with varus and valgus stretch…. Range of motion on the right is 15-125 degrees…. Distal pulses are intact. Motor exam[ination] on the right lower limb is intact."

* * *

"Based upon the chapter on lower extremity evaluations section 17.2f, Table 17-10 and section 17.2h, table 17-31, I believe that either of these sections can be used and give nearly equivalent permanent impairment ratings. [Appellant's] examination revealed varus in the knee, by goniometer, when standing this measured five degrees. He did not have normal flexion of the knee, no impairment is given for flexion less than 140 degrees but greater than 110 degrees, but there is clinical impairment associated with loss of flexion. It is not recognized in [the A.M.A., *Guides*]. He does have a flexion contracture measured by goniometer at 15 degrees. Combining the 5 degrees of varus … which is 20 percent of the lower limb and the flexion contracture which is … 20 percent of the lower limb, he would have a 40 percent permanent partial impairment of the right lower extremity. It states in section 17.2f that the alignment angles and impairment should be added, so that is what I have done. From the radiologic standpoint, I do not have x-rays to measure. However, x-ray report in the clinic note dated October 12, 2004 indicates bone on bone lateral compartment arthritic change.[4] [Statement of accepted facts] accepts that [appellant] had osteoarthritis of the right knee, so arthritis criteria can be used. Therefore, under [T]able 17-31, section 17.2h his lower extremity rating would be 49 percent…. Given that I have not seen the x-rays personally, I am inclined to call this 40 percent of the right lower extremity, and it would be equal to the findings related to range of motion restrictions."

By decision dated March 23, 2005, the Office granted appellant a schedule award for 57.6 weeks, for the period November 17 to December 24, 2004, based on a 20 percent impairment of the right lower extremity.[5] Appellant's weekly compensation rate was $656.66. The Office indicated that the total amount of compensation due appellant was $9, 849.83.

On October 2, 2005 appellant requested reconsideration. He stated, "I understand that there should be a total of 40 percent … [i]mpairment to [the] [l]ower [e]xtremity. I have already received 20 percent, but not the additional 20 percent from Dr. Somers.…"

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[4] This appears to be a reference to clinical notes dated October 12, 2004 in which Dr. Graves stated that x-rays revealed "lateral compartment arthritic changes nearly bone-on-bone." Dr. Somers stated, "No tests were performed today. Office notes and interpretation of x-rays indicate what appears to be progressive degenerative arthritis in the right knee, primarily the lateral compartment."

[5] The Federal Employees' Compensation Act provides for 288 weeks of compensation for 100 percent loss or loss of use of a lower extremity. 5 U.S.C. § 8107(c)(2). Multiplying 288 weeks by 20 percent equals 57.6 weeks of compensation. As appellant had previously received two schedule awards for the right lower extremity totaling 20 percent, the Office deducted 20 percent from the 40 percent rating from Dr. Somers.

By decision dated October 18, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence did not warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of the Federal Employees' Compensation Act[6] and its implementing regulation[7] 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 A.M.A., *Guides*[8] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[9]

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required.

The Board finds that Dr. Somers' impairment rating is not correctly based on the A.M.A., G*uides*. He stated that appellant's impairment rating could be based on either Table 17-10 at page 537 of the A.M.A., *Guides*, regarding range of motion of the knee, or Table 17-31 at page 544 regarding arthritis impairments based on cartilage levels revealed on x-ray (roentgenographic findings). He correctly calculated a 40 percent impairment based on loss of range of motion which included 20 percent for 5 degrees of decreased varus and 20 percent for 15 degrees of flexion contracture, based on Table 17-10. However, he incorrectly calculated appellant's impairment employing an alternative rating method. Dr. Somers calculated a 40 percent impairment based on arthritic changes and Table 17-31. However, he did not provide cartilage measurements for appellant which are required for the use of Table 17-31.[10] Further, the A.M.A., *Guides* provides at section 17.2h (Arthritis):

> "For most individuals, roentgenographic grading is a more objective and valid method for assigning impairment estimates than physical findings, such as the range of motion…. While there are some individuals with arthritis for whom loss of motion is the principal impairment, most people are impaired more by pain and sometimes weakness…. Range-of-motion techniques are therefore of limited value for estimating impairment secondary to arthritis in many individuals."

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[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[9] 20 C.F.R. § 10.404.

[10] Arthritis is evaluated based on narrowing of the joint space as measured by x-rays. *See* A.M.A., *Guides* 525.

The Board notes that an impairment rating based on arthritic changes can be combined with an impairment rating due to "Diagnosis-Based Estimates."[11] Appellant underwent a partial meniscectomy. Table 17-33 at page 546 provides for a two percent impairment of the lower extremity for a partial meniscectomy. Dr. Somers did not correctly calculate appellant's impairment due to arthritic changes, based on Table 17-31. He did not address whether the impairment due to arthritic changes should be combined with impairment due to a partial meniscectomy as described in Table 17-33. His report is fully explained for a determination of appellant's right lower extremity impairment. The case will be remanded for further development and a medical report which correctly calculates appellant's right lower extremity according to the fifth edition of the A.M.A., G*uides.*[12]

On appeal, appellant states, "I am not questioning the 40 percent … rating that I received, however, I am disputing the total amount of money [paid]." The Board finds that the Office, in its March 23, 2005 schedule award decision, incorrectly calculated the amount of compensation due appellant. The Office granted compensation in the amount of $9,849.83 for a 20 percent impairment of the right lower extremity which equals 57.6 weeks of compensation. However, multiplying 57.6 weeks by appellant's weekly compensation rate, $656.66, equals $37,823.62. Therefore, the March 23, 2005 decision is also incorrect as to the amount of compensation.

CONCLUSION

The Board finds that this case requires further development of the medical evidence.

[11] *See* A.M.A., *Guides* 526, Table 17-2.

[12] In light of the Board's resolution of the first issue, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 18 and March 23, 2005 are set aside and the case remanded for further action consistent with this decision.

Issued: March 13, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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