United States Department of Labor
Employees' Compensation Appeals Board

NORMAN J. BOCZKOWSKI, Appellant	)	
and	)	**Docket No. 06-526**
	)	**Issued: May 1, 2006**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Buffalo, NY, Employer	)	

Appearances:
Norman J. Boczkowski, 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 January 6, 2005 appellant filed a timely appeal from the December 2, 2005 merit decision of the Office of Workers' Compensation Programs, granting a schedule award for a 10 percent impairment of the right knee. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue is whether appellant established that he has more than a 10 percent impairment of the right knee, for which he received a schedule award.

FACTUAL HISTORY

On March 14, 2003 appellant, then a 58-year-old mail handler, filed a traumatic injury claim alleging that on March 13, 2003 he got off a jitney to hook up an all-purpose container and felt pain in his right knee. The Office accepted his claim for a right knee strain. The Office subsequently accepted a medial meniscal tear of the right knee and authorized a partial medial

meniscectomy which was performed on December 8, 2004 by Dr. Joseph E. Buran, an attending Board-certified orthopedic surgeon.[1]

By letter dated December 13, 2004, the Office requested that Dr. Buran provide a narrative medical report which addressed appellant's current physical condition and work abilities. In a December 28, 2004 report, he stated that appellant was weak postoperatively. Dr. Buran stated that he was sore and sustained swelling and aches due to arthritis and surgical intervention. He stated that appellant would continue home rehabilitation and not go to physical therapy. On physical examination he reported limited range of motion. In a work capacity evaluation (Form OWCP-5c) dated January 3, 2005, Dr. Buran found that appellant was totally disabled as he was recovering from the December 8, 2004 right knee surgery. In a January 19, 2005 Form OWCP-5, he stated that appellant had extensive chondroplasty of the right knee and that he was unable to stand, walk, squat or kneel. He further stated that appellant would be able to perform light-duty work in six to seven weeks.

In a January 31, 2005 disability certificate, Dr. Buran indicated that appellant was totally disabled for work until further notice and that he should be cleared to return to work at the employing establishment in three months. On March 4, 2005 Dr. Buran released him to return to work on March 25, 2005 with no restrictions and he returned on the scheduled date.

On June 10, 2005 appellant filed a claim for a schedule award. He submitted Dr. Buran's June 13, 2005 attending physician's report which diagnosed a meniscal tear of the right knee. Dr. Buran indicated with an affirmative mark that the diagnosed condition was caused by an injury appellant sustained at work while performing his normal duties. He also indicated that he returned to work on March 25, 2005.

By letter dated July 6, 2005, the Office advised appellant to make an appointment with his attending physician to determine the extent of any permanent impairment of the right knee based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

Dr. Buran submitted narrative reports dated July 29 and September 27, 2005, noting appellant's right knee symptoms. On physical examination he reported extension (flexion contracture) which lacked 10 to 15 degrees and full extension. Flexion was reasonable to over 90 degrees and varus deformity was noted. Dr. Buran opined that appellant had reached maximum medical improvement based on the New York State Workers Compensation Board's *Medical Guidelines*. He noted that range of motion had changed and was altered from before. Dr. Buran determined that appellant had a 10 percent impairment for a meniscectomy, 20 percent impairment for loss of motion and 10 percent impairment for chondromalacia, totaling a 40 percent impairment of the right knee. He noted that appellant would need total knee arthroplasty in the future.

[1] Prior to his December 8, 2004 right knee surgery, appellant filed two claims (Form CA-2a and Form CA-7) alleging a recurrence of disability commencing on December 8, 2004. By letter dated December 13, 2004, the Office accepted his recurrence of disability claim.

On November 13, 2005 an Office medical adviser reviewed Dr. Buran's reports and noted that he did not use the A.M.A., *Guides* to determine the extent of appellant's impairment. The Office medical adviser found that appellant reached maximum medical improvement on September 27, 2005. Utilizing the A.M.A., *Guides* 537, Table 17-10, the she determined that negative 15 degrees of extension and 90 degrees of flexion constituted a 10 percent impairment of the right knee.

By decision dated December 2, 2005, the Office granted appellant a schedule award for a 10 percent impairment of the left leg based on the Office medical adviser's opinion.[2]

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] sets forth the number of weeks of compensation to be paid for permanent loss or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[5] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[6]

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.[7]

With regard to the lower extremity, the A.M.A., *Guides* provide protocols for rating the extent of permanent impairment at Chapter 17. Section 17-2 notes that after identifying all the potentially impairing conditions and recording the correct ratings, the medical evaluator should select the clinically most appropriate method of rating impairment. The Cross-Usage Chart at page 526 states which methods and impairment ratings may be combined with one another.

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[2] The Board notes that it appears that the Office inadvertently stated in the December 2, 2005 decision that appellant was granted a schedule award for a 10 percent impairment of the left leg rather than the right leg as the Office developed the medical evidence with regard to the extent of impairment of appellant's right knee.

[3] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[4] 20 C.F.R. § 10.404.

[5] 5 U.S.C. § 8107(c)(19).

[6] 20 C.F.R. § 10.404.

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

ANALYSIS

Appellant argues on appeal that his physician, Dr. Buran, opined that he had a 40 percent impairment of the right knee but the Office issued a schedule award for a 10 percent impairment. In reports dated July 29 and September 27, 2005, Dr. Buran found that appellant had 10 to 15 degrees of extension, 90 degrees of flexion and varus deformity. He calculated a 10 percent impairment for a meniscectomy, 20 percent impairment for loss of motion and 10 percent impairment for chondromalacia, totaling 40 percent impairment of the right knee. The Board finds that Dr. Buran failed to provide a rationalized medical opinion on the issue of permanent impairment. He did not identify any specific figures and tables of the A.M.A., *Guides* or explain how he determined the degree of impairment of the right knee. Appellant did not submit any other medical evidence establishing that he has more than a 10 percent impairment of the right knee.

An Office medical adviser reviewed Dr. Buran's reports and explained how the provisions of the A.M.A., *Guides* were applied in calculating an impairment rating for the right knee. The Office medical adviser stated that, negative 15 degrees of extension and 90 degrees of flexion constituted a 10 percent impairment of the right knee based on the A.M.A., *Guides* 537, Table 17-10. The Board notes that appellant underwent a partial medial meniscectomy Table 17-33 of the A.M.A., *Guides* provides for additional impairment for a meniscectomy. However, the A.M.A., *Guides* prohibits combining range of motion with diagnosis-based impairments.[8]

Board precedent is well settled that, when an attending physician's report gives an estimate of impairment, but does not indicate that the estimate is based upon the application of the A.M.A., *Guides* or improperly applies the A.M.A., *Guides*, the Office is correct to follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.[9] As the Office medical adviser provided a reasoned opinion that appellant had a 10 percent impairment based on Table 17-10 of the A.M.A., *Guides,* the Board finds that the weight of the medical evidence with regard to the degree of impairment to the right knee is represented by the Office medical adviser's opinion.

CONCLUSION

The Board finds that appellant has failed to establish that he has more than a 10 percent impairment of the right knee for which he received a schedule award.

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

[9] *See Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 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