United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 06-1520**
	)	**Issued: January 25, 2007**
U.S. POSTAL SERVICE, WARREN ANNEX, Warren, OH, Employer	)	

Appearances:
John P. Lutseck, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 20, 2006 appellant, through his attorney, filed a timely appeal from a May 19, 2006 merit decision of a hearing representative of the Office of Workers' Compensation Programs affirming a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than a 10 percent impairment of his right lower extremity.

FACTUAL HISTORY

On September 22, 2003 appellant, then a 46-year-old letter carrier, filed a claim for a traumatic injury occurring that date when he injured his right knee while loading mail in a truck. The Office accepted his claim for a right knee medial meniscus tear. Appellant stopped work on September 22, 2003. On January 2, 2004 Dr. Thomas B. Jones, Jr., a Board-certified orthopedic surgeon, performed a partial medial meniscectomy and an ablation chondroplasty of the medial

femoral condyle of the right knee. On April 30, 2004 he performed a chondroplasty of the right medial femoral condyle. Appellant returned to limited-duty employment on July 1, 2004 and to his regular employment on September 2, 2004.

On September 12, 2004 appellant filed a claim for a schedule award. He submitted a report dated September 30, 2004 from Dr. John J. Vargo, an osteopath, who discussed his continued complaints of pain in the inferior medial pole of the patella. Dr. Vargo measured range of motion of the right knee as 0 degrees extension, 110 degrees flexion and 0 degrees angulation valgus distal to knee. He found medial grapping of the right knee and no atrophy on the right versus the left side. Applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*), Dr. Vargo found that appellant had a 10 percent impairment of the right lower extremity due to loss of flexion and a 10 percent impairment due to 0 degrees valgus distal to the knee, which he added to find a 20 percent impairment due to loss of range of motion.[1] Dr. Vargo further found a seven percent impairment due to laxity of the medial collateral ligament.[2] He determined that appellant had a two percent right lower extremity impairment due to his partial medial meniscectomy.[3] Dr. Vargo combined the impairment percentages due to loss of range of motion, collateral ligament laxity and the partial medial meniscectomy to find a 27 percent impairment of the right lower extremity. Dr. Jones, in a note dated November 12, 2004, concurred with the impairment rating.

An Office medical adviser reviewed Dr. Vargo's report on December 19, 2004 and applied the A.M.A., *Guides* to his findings. He found that appellant had no impairment due to loss of extension and a 10 percent impairment due to loss of flexion.[4] The Office medical adviser further found one inch of calf atrophy for a three percent impairment.[5] He determined that appellant had a seven percent impairment for mild medial collateral ligament laxity and a two percent impairment due to his partial medial meniscectomy.[6] The Office medical adviser noted that Table 17-2 on page 526 of the A.M.A., *Guides* prohibited combining impairments due to diagnosis-based estimates, atrophy and range of motion. He used appellant's 10 percent impairment due to loss of flexion as the basis for the impairment rating in order to maximize the amount of the schedule award. The Office medical adviser noted that appellant reached maximum medical improvement on September 22, 2004.

By decision dated January 13, 2005, the Office granted appellant a schedule award for a 10 percent impairment of the right lower extremity. The period of the award ran for 28.80 weeks from September 30, 2004 to April 10, 2005.

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[1] A.M.A., *Guides* at 537, Table 17-10.

[2] *Id*. at 546, Table 17-33.

[3] *Id*.

[4] *Id*. at 537, Table 17-10.

[5] *Id*. at 530, Table 17-6. The Board notes, however, that appellant has no calf atrophy on the right side. Dr. Vargo measured calf circumference on the right as 17¾ inches and on the left as 16¼ inches.

[6] *Id*. at 546, Table 17-33.

On January 18, 2005 appellant, through his attorney, requested an oral hearing.[7] On April 21, 2006 counsel requested a review of the written record in lieu of an oral hearing. In a decision dated May 19, 2006, the Office hearing representative affirmed the January 13, 2005 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[8] and its implementing federal regulation,[9] 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* (5th ed. 2001), as the uniform standard applicable to all claimants.[10] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[11]

The A.M.A., *Guides* provides for three separate methods for calculating the impairment of an individual: anatomic, functional and diagnosis based.[12] The anatomic methods involves noting changes, including muscle atrophy, nerve impairment and vascular derangement, as found during physical examination.[13] The diagnosis-based method may be used to evaluate impairments caused by specific fractures and deformities, as well as ligamentous instability, bursitis and various surgical procedures, including joint replacements and meniscectomies.[14] In certain situations, diagnosis-based estimates are combined with other methods of assessment.[15] The functional method is used for conditions when anatomic changes are difficult to categorize or when functional implications have been documented and includes range of motion, gait derangement and muscle strength.[16] The evaluating physician must determine which method best describes the impairment of a specific individual based on patient history and physical examination.[17] When uncertain about which method to use, the evaluator should calculate the

[7] In a progress report dated December 13, 2005, Dr. Jones diagnosed post-traumatic arthritis due to appellant's medial meniscus tear and noted that his condition was deteriorating.

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

[10] 20 C.F.R. § 10.404(a).

[11] *See* FECA Bulletin No. 01-5, issued January 29, 2001.

[12] A.M.A., *Guides* at 525.

[13] *Id*.

[14] *Id*.

[15] *Id*. The A.M.A., *Guides* specifically excludes combining diagnosis-based estimates with range of motion and ankylosis deficits. A.M.A., *Guides* 526, Table 17-2.

[16] *Id*. at 525, Table 17-1.

[17] *Id*. at 548, 555.

impairment using different alternatives and choose the method or combination of methods that give the most clinically accurate impairment rating.[18] If more than one method can be used, the method that provides the higher impairment rating should be adopted.[19]

ANALYSIS

The Office accepted that appellant sustained a medial meniscus tear of the right knee due to a September 22, 2003 employment injury. Dr. Jones performed a partial medial meniscectomy and chondroplasty of the medial femoral condyle of the right knee on January 2, 2004 and a second chondroplasty of the right medial femoral condyle on April 30, 2004.

On September 12, 2004 appellant filed a claim for a schedule award. In an impairment evaluation dated September 30, 2004, Dr. Vargo noted appellant's symptoms of pain in the inferior medial pole of the patella. On physical examination, he measured range of motion of 110 degrees of flexion, 0 degrees extension and 0 degrees angulation valgus distal to knee. Citing Table 17-10 on page 537 of the A.M.A., *Guides*, Dr. Vargo found that appellant had 10 percent impairment of the right lower extremity due to loss of flexion and a 10 percent impairment due to 0 degrees valgus distal to the knee, for a 20 percent total impairment due to loss of range of motion. He next asserted that he had a seven percent impairment due to medial collateral ligament laxity and a two percent impairment due to his partial medial meniscectomy according to Table 17-33 on page 546 of the A.M.A., *Guides*. Dr. Vargo combined his impairment determinations to find a 27 percent right lower extremity impairment. The Board notes, however, that Table 17-2 on page 526 of the A.M.A., *Guides* prohibits combing diagnosis-based estimates such as for a meniscectomy and collateral ligament laxity with an impairment due to loss of range of motion. Consequently, Dr. Vargo's calculation of the percentage of impairment is not in accordance with the A.M.A., *Guides*.

On December 19, 2004 an Office medical adviser reviewed Dr. Vargo's report. The Office medical adviser determined that appellant had no loss of extension and that 110 degrees of flexion constituted a 10 percent impairment.[20] The Office indicated that appellant had a three percent impairment due to one inch of calf atrophy. However, as Dr. Vargo measured calf circumference on the right as 17¾ inches and on the left as 16¼ inches, appellant does not have calf atrophy on the right side.[21] The Office medical adviser found that he had a seven percent impairment for mild medial collateral ligament laxity and a two percent impairment due to his partial medial meniscectomy.[22] He properly noted that the A.M.A., *Guides* at Table 17-2 on page 526 provided that impairments due to diagnosis-based estimates, atrophy and range of motion could not be combined and thus, appellant was only entitled to an award based on one of these three evaluation methods. The Office medical adviser selected range of motion as it

[18] *Id*. at 526.

[19] *Id*. at 527, 555.

[20] *Id*. at 537, Table 17-10.

[21] *Id*. at 530, Table 17-6.

[22] *Id*. at 546, Table 17-33.

provided the greatest award.[23] He concluded that appellant had a 10 percent right lower extremity impairment due to loss of flexion. The Board notes, however, that Dr. Vargo found that appellant had a 10 percent impairment due to loss of flexion and a 10 percent impairment due to 0 degrees of angulation valgus remote to knee. According to Table 17-10 on page 527 of the A.M.A., *Guides*, 0 degrees of valgus constitutes a 10 percent lower extremity impairment.[24] Adding the 10 percent impairment due to 0 degrees valgus with the 10 percent impairment due to loss of flexion equals a 20 percent lower extremity impairment.[25] The Board finds that appellant has a 20 percent impairment of the right lower extremity.

On appeal appellant contends that he is entitled to a schedule award for a 27 percent right lower extremity impairment. As discussed, however, Dr. Vargo's finding of a 27 percent impairment is based on an improper application of the A.M.A., *Guides*, as he combined impairments for loss of range of motion and diagnosis-based estimates.[26]

CONCLUSION

The Board finds that appellant has a 20 percent impairment of the right lower extremity.

[23] If more than one method to assess impairment can be used, the method that provides the higher impairment rating should be adopted. *Id*. at 527, 555.

[24] Table 17-10 on page 527 of the A.M.A., *Guides* provides that 3 to 10 degrees of valgus is normal.

[25] The A.M.A., *Guides* provides that impairments due to loss of range of motion are added. A.M.A., *Guides* at 533.

[26] *Id*. at 526, Table 17-2.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 19, 2006 is affirmed as modified.

Issued: January 25, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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