United States Department of Labor
Employees' Compensation Appeals Board

J.O., Appellant	)	
and	)	**Docket No. 07-1484**
	)	**Issued: October 25, 2007**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Tampa, FL, Employer	)	

Appearances:
Capp Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 10, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 23, 2007 with respect to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than an eight percent permanent impairment to his left leg, for which he received a schedule award.

FACTUAL HISTORY

Appellant filed an occupational disease claim on November 19, 2002 alleging that he sustained injuries as a result of his federal employment as a mail handler. The Office accepted the claim for aggravation of bilateral knee degenerative arthritis, herniated lumbar disc and displacement of lumbar intervetebral disc without myelopathy.

In a report dated October 14, 2003, Dr. Allen Miller, an orthopedic surgeon, reported that appellant had 135 degrees of knee flexion and 0 degrees of extension. He opined that appellant had a 10 percent impairment to the right leg and an 11 percent impairment to the left leg. By report dated May 24, 2004, Dr. Arthur Pedregal, a neurologist, opined that appellant had an eight percent impairment based on radiculopathy. An Office medical adviser concurred with Dr. Pedregal in a report dated July 23, 2004.

By decision dated August 6, 2004, the Office issued a schedule award for an eight percent permanent impairment to the left leg. The period of the award was 23.08 weeks commencing February 17, 2004.

An Office medical adviser submitted a September 29, 2004 report opining that the October 14, 2003 report did not provide a sufficient basis for an impairment rating. In a July 8, 2005 report, Dr. Pedregal provided results on examination, noting decreased vibration appreciation in the distal lower extremities. He diagnosed lumbar spondylosis.

In a report dated August 26, 2005, an Office medical adviser reviewed the July 8, 2005 report and opined that the report was not sufficient to show a permanent impairment of the legs. Appellant submitted additional reports from Dr. Pedregal dated January 10 and April 4, 2006 with results on examination. Dr. Pedregal indicated that appellant has stable lumbar spondylosis. An Office medical adviser opined in a September 14, 2006 report that the evidence did not show a greater than eight percent leg impairment. The medical adviser stated that appellant had lumbar spondylosis with no myelopathy or radicular component.

By decision dated September 21, 2006, the Office determined that appellant had not established entitlement to an additional schedule award.

Appellant requested a hearing before an Office hearing representative, which was held telephonically on January 11, 2007. In a decision dated March 23, 2007, the hearing representative found that appellant had not established entitlement to an additional schedule award. The hearing representative found that neither the October 14, 2003 report from Dr. Miller nor the additional medical reports from Dr. Pedregal established a greater than eight percent leg impairment.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act 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 permanent impairment of the scheduled member or function.[1] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

[1] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.[2]

ANALYSIS

In the present case, the evidence does not establish a permanent impairment greater than the eight percent left leg impairment received by appellant on August 6, 2004. Appellant has argued that Dr. Miller's October 14, 2003 report shows a greater impairment, but this report is of little probative value on the issue presented. Dr. Miller does not explain how he determined the impairment ratings based on his findings. If the degree of permanent impairment is based on loss of motion in the knee, there must be some explanation as to how the A.M.A., *Guides* were applied to the examination findings.[3] The report did not provide separate examination findings for the right and left knee, and yet the impairment ratings for the legs differed. The Board also notes that an Office medical adviser reviewed the report and opined that it was insufficient to establish a permanent impairment to the lower extremities.

The additional reports from Dr. Pedregal do not establish entitlement to an additional schedule award. Dr. Pedregal provided results on examination and reported a stable lumbar spondylosis. He did not provide an opinion as to a permanent impairment to a scheduled member of the body. In addition, Dr. Pedregal's reports were reviewed by Office medical advisers, who opined that the reports were not sufficient to establish an additional permanent impairment to the lower extremities.

Based on the evidence of record, the Board finds that there is no probative evidence of a permanent impairment greater than the eight percent permanent impairment to the left leg previously awarded. The Office properly found that appellant was not entitled to an additional schedule award in this case.

CONCLUSION

The evidence of record does not establish a permanent impairment greater than eight percent to the left leg, for which appellant received a schedule award.

[2] *A. George Lampo*, 45 ECAB 441 (1994).

[3] Table 17-10, for example, provides impairment ratings based on knee loss of motion. A.M.A., *Guides* 537. It is not clear whether Dr. Miller applied Table 17-10, and if so, how he applied the table.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 23, 2007 and September 21, 2006 are affirmed.

Issued: October 25, 2007
Washington, DC

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

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

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