

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

R.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
White Plains, NY, Employer**

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**Docket No. 10-819
Issued: December 20, 2010**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 1, 2010 appellant, through his attorney, filed a timely appeal from a January 19, 2010 merit decision of the Office of Workers' Compensation Programs granting him 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 19 percent permanent impairment of his left lower extremity.

FACTUAL HISTORY

On November 13, 1997 appellant, then a 33-year-old letter carrier, filed an occupational disease claim alleging that he sustained tendinitis due to factors of his federal employment. The Office accepted the claim for left knee tendinitis. Appellant sustained intermittent periods of total disability. The Office expanded acceptance to include an intrameniscal tear with the

posterior horn of the medial meniscus based on a July 6, 1998 magnetic resonance imaging (MRI) scan study.

On July 19, 2000 appellant underwent a diagnostic left knee arthroscopy with open exploration of the patellar tendon. Dr. David Lent, a Board-certified orthopedic surgeon, found an intact medial and lateral meniscus and anterior cruciate ligament. The postoperative diagnosis was left chronic patellar tendinitis.

On March 4, 2009 appellant filed a claim for a schedule award.¹ He submitted a July 3, 2009 impairment evaluation from Dr. Norman M. Heyman, a Board-certified orthopedic surgeon, who discussed appellant's history of a November 3, 1997 work injury.² Dr. Heyman diagnosed left knee patellar tendinitis and internal derangement, a history of arthroscopic surgery of the left knee with open removal of the patellar tendon and weakness of the left hip. He measured range of motion of the hip as 110 degrees flexion, 45 degrees abduction, 30 degrees external rotation and 20 degrees internal rotation. Dr. Heyman measured knee motion of 0 to 130 degrees with strength of 3/5 of the knee flexor and quadriceps. He indicated that appellant's difficulties were primarily functional with satisfactory range of motion but decreased muscle strength and mild thigh atrophy. Using Table 16-3 on page 409 of the sixth edition of the A.M.A., *Guides*, Dr. Heyman identified appellant's left lower extremity diagnosis as patellar tendinitis. He categorized his patellar tendinitis as an impairment Class 2, which yielded a default impairment of 22 percent. Dr. Heyman found grade modifiers of two for both functional history and physical examination and a grade modifier of zero for clinical studies. Applying the net adjustment formula set forth in the sixth edition of the A.M.A., *Guides*, he modified the adjusted default finding from 22 percent to 19 percent. Dr. Heyman additionally found that appellant had a diagnosis of a Class 1 medial meniscal tear which yielded a default value of two percent under Table 16-3. After applying the grade modifiers, he increased the impairment from the medial meniscal tear to three percent. Dr. Heyman next found that, according to Table 16-4 on page 512, appellant had a Class 2 impairment due to hip weakness which yielded a default impairment of 16 percent. He applied the modifiers and found the impairment result unchanged at 16 percent. Dr. Heyman combined the 19 percent impairment due to patellar tendinitis, the 3 percent impairment due to the meniscal tear and the 16 percent impairment due to weakness of the hip muscle to find a 35 percent impairment of the lower extremity.

On November 12, 2009 the Office medical adviser noted that a July 6, 1998 MRI scan study found a tear of the posterior horn of the medial meniscus but that a July 19, 2000 arthroscopy of the left knee revealed no "meniscal pathology." He concurred with Dr. Heyman's finding that appellant had a 19 percent impairment due to patellar tendinitis utilizing Table 16-3 on page 509. The Office medical adviser disagreed with Dr. Heyman's finding that he was entitled to an additional impairment for a second knee diagnosis, as only "one major diagnosis for a particular region can be selected." He further noted that surgery did not reveal a meniscal

¹ Appellant initially submitted a report dated February 12, 2009 from Dr. Heyman; however, the Office requested that he submit another opinion in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008).

² Dr. Heyman also performed an impairment evaluation of the upper extremities.

tear.³ The Office medical adviser determined that Dr. Heyman inaccurately utilized the A.M.A., *Guides* in finding an impairment due to hip weakness. He noted that Table 16-4 on page 512 did not provide a diagnosis category for weakness of the hip and that none of the diagnoses listed on the page cited by Dr. Heyman provided Class 2 impairments. The Office medical adviser further indicated that the remaining hip diagnoses set forth in Table 16-4 that provided Class 2 impairments were not applicable. He concluded that appellant had a 19 percent left lower extremity impairment.

By decision dated January 19, 2010, the Office granted appellant a 19 percent permanent impairment of the left lower extremity. The period of the award ran for 54.72 weeks from July 3, 2009 to July 21, 2010.

On appeal, appellant's attorney argues that appellant should receive the rating provided by Dr. Heyman.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing federal regulations,⁵ 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* as the uniform standard applicable to all claimants.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).⁸ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

³ The Office medical adviser incorrectly noted that a medial meniscal tear was not an accepted condition; however, this error is harmless as it does not affect the schedule award determination.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* 494-531.

ANALYSIS

The Office accepted that appellant sustained employment-related left knee tendinitis and a tear of the medial meniscus as seen by a July 6, 1998 MRI scan study. Appellant underwent a diagnostic left knee arthroscopy on July 19, 2000 which revealed an intact medial and lateral meniscus and anterior cruciate ligament.

On March 4, 2009 appellant filed a schedule award claim. In a July 3, 2009 impairment evaluation, Dr. Heyman diagnosed left knee patellar tendinitis and internal derangement and left hip weakness. He found that appellant had no significant loss of range of motion, but had decreased muscle strength and mild atrophy of the thighs. Dr. Heyman identified the diagnosis of patellar tendinitis using Table 16-3 and asserted that he had a Class 2 impairment. He found grade modifiers of two for both functional history (GMFH) and physical examination (GMPE) and a zero grade modifier for clinical studies (GMCS). Applying the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$, Dr. Heyman adjusted the default impairment from 22 percent to 19 percent.⁹ He further found that appellant had an additional three percent impairment due to his left knee diagnosis of a medial meniscal tear. As found by the Office medical adviser, however, the sixth edition of the A.M.A., *Guides* only allows a rating for the most impairing diagnosis in a region.¹⁰ Consequently, appellant is not entitled to an additional award for a medial meniscal tear as he already received a rating for the left knee for patellar tendinitis. Regarding Dr. Heyman's finding that appellant had a Class 2 or 16 percent impairment, due to hip weakness under Table 16-4 on page 512, the Office medical adviser properly found that there was no rating for Class 2 impairments on that page and that the remaining hip diagnoses set forth in Table 16-4 were not applicable in this case. He concluded that appellant had 19 percent permanent impairment of the left lower extremity. The Board finds that the weight of the evidence shows that he has no greater impairment.

On appeal, counsel argues that appellant should receive the award determined by Dr. Heyman. As discussed, however, Dr. Heyman's report did not fully conform to the A.M.A., *Guides* and it is of diminished probative value.¹¹

CONCLUSION

The Board finds that appellant has no more than 19 percent permanent impairment of his left lower extremity.

⁹ Applying the net adjustment formula yields as follows: $(2 - 2) + (2 - 2) + (0 - 2)$, for a net adjustment of minus 2.

¹⁰ A.M.A., *Guides* 497-500.

¹¹ Mary L. Henninger, 52 ECAB 408 (2001).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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