United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 10-1242**
	)	**Issued: February 24, 2011**
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Vincennes, IN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 1, 2010 appellant filed a timely appeal from the October 29, 2009 merit decision of the Office of Workers' Compensation Programs and the January 13, 2010 nonmerit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has more than a two percent impairment of his right lower extremity, for which he received a schedule award; and (2) whether the Office properly refused to reopen appellant's case for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

Appellant, a 58-year-old training specialist, experienced a sharp pain in his right knee on September 20, 2007 while loading equipment into a van. He filed a claim for benefits on September 21, 2007, which the Office accepted for right knee collateral ligament tear. On

March 7, 2008 appellant underwent an arthroscopy of the right knee for medial femoral condyle chondroplasty and partial lateral meniscectomy. The procedure was performed by Dr. Angela Freehill-Brown, a Board-certified orthopedic surgeon.

On November 3, 2008 appellant filed a Form CA-7 claim for a schedule award based on loss of use of his right lower extremity.

By letter dated November 12, 2008, the Office requested that appellant schedule an appointment with Dr. Freehill-Brown for the purpose of evaluating whether he had any permanent impairment of his right leg from his accepted right knee condition. Appellant advised the Office on November 19, 2008 that Dr. Freehill-Brown did not perform impairment evaluations.

The Office referred appellant to Dr. Richard T. Katz, Board-certified in physical medicine and rehabilitation, for a second opinion examination and impairment evaluation. In a January 30, 2009 report, Dr. Katz found that appellant had a two percent impairment of the right lower extremity based on a partial meniscectomy pursuant to Table 17-33 at page 547 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*).

In a report dated February 6, 2009, an Office medical adviser agreed with Dr. Katz that appellant had a two percent impairment of the right lower extremity pursuant to the A.M.A., *Guides*.

By decision dated March 12, 2009, the Office granted appellant a schedule award for a two percent impairment of the right leg. The award ran for the period May 22 to July 1, 2008, or a total of 5.76 weeks of compensation.

On March 16, 2009 appellant requested reconsideration of the March 12, 2009 schedule award decision. He did not submit any additional medical evidence.

By decision dated March 30, 2009, the Office denied appellant's application for review on the grounds that it did not raise any substantive legal questions or include new and relevant evidence sufficient to require further merit review.

By letter dated August 3, 2009, appellant requested reconsideration. In reports dated July 21 to September 22, 2009, Dr. Freehill-Brown provided findings on examination. She noted that appellant had complaints of right knee pain and recommended physical therapy. None of her reports, however, addressed the issue of permanent impairment.

By decision dated October 29, 2009, the Office found that appellant did not establish greater impairment to his right leg.

By letter dated December 21, 2009, appellant requested reconsideration, contending that he had more than two percent impairment based on the opinions of three physicians with whom he had discussed his condition. He also contended that the Office did not provide these physicians with the applicable standards of the A.M.A., *Guides.*

By decision dated January 13, 2010, the Office denied appellant's application for review on the grounds that he failed to raise a substantive legal question or include new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[1] set 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 loss of use.[2] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* as the standard to be used for evaluating schedule losses.[3] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[4]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for torn right knee collateral ligament. Appellant was referred to Dr. Katz, the second opinion examiner, who conducted an evaluation of his right knee and found two percent impairment based on a partial meniscectomy under Table 17-33 at page 546 of the A.M.A., *Guides*.[5] Dr. Katz's report was thorough and well rationalized and his rating of impairment were based on his examination and the medical evidence of record. The Board notes that the Office medical adviser agreed with the rating by Dr. Katz. The weight of medical opinion does not establish more than two percent right leg impairment. At the time of the award, the rating complied with the fifth edition of the A.M.A., *Guides.*

Appellant failed to submit medical evidence sufficient to warrant an increased schedule award. Dr. Freehill-Brown, an attending physician, provided findings on examination of appellant's knee, however, none of his reports provided any opinion on the extent of impairment stemming from his accepted right knee condition. While Dr. Freehill-Brown stated findings on examination and provided updates on appellant's current condition, she did not address impairment with regard to the A.M.A., *Guides*.[6] Appellant has submitted no other medical

[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 5 U.S.C. § 8107(c)(19).

[3] 20 C.F.R. § 10.404.

[4] *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

[5] A.M.A., *Guides* 547.

[6] The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which 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. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005).

evidence establishing greater impairment to his right lower extremity. The Board will affirm the Office's October 29, 2009 decision.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[7] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[8]

ANALYSIS -- ISSUE 2

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the Office. He has not submitted any new, pertinent medical evidence which addresses the relevant issue of the extent of permanent impairment to his right lower extremity. Appellant contended that he has greater impairment and that three unidentified physicians he consulted advised him of greater impairment. He stated that the Office did not provide these physicians with the applicable protocols of the A.M.A., *Guides.* Appellant has the burden to provide medical evidence to support a greater award. His general references to opinion of physicians not of record have no probative value. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has no additional impairment of his right lower extremity. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

[7] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[8] *Howard A. Williams,* 45 ECAB 853 (1994).

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2010 and October 29, 2009 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: February 24, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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