United States Department of Labor
Employees' Compensation Appeals Board

L.P., Appellant	)	
and	)	**Docket No. 10-1251**
	)	**Issued: January 25, 2011**
U.S. POSTAL SERVICE, WEST END POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Appellant, pro se
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 April 1, 2010 appellant filed a timely appeal from a January 7, 2010 decision of the Office of Workers' Compensation Programs regarding a schedule award claim. Pursuant to §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained more than a 22 percent permanent impairment of the right lower extremity in the performance of duty, for which he received schedule awards.

On appeal, appellant asserted that a new December 4, 2009 letter from his attending physician established an additional two percent impairment of the right leg. He submitted a signed, dated copy of the letter.

FACTUAL HISTORY

The Office accepted that on September 27, 2007 appellant, then a 40-year-old letter carrier, sustained a lateral meniscal tear and lateral collateral ligament sprain of the right knee

when he ascended steps while delivering mail. It previously accepted that work factors prior to 2004 caused a right knee strain with meniscal tears, synovitis and internal derangement requiring two arthroscopic lateral and medial meniscectomies.[1] The Office awarded appellant schedule awards on August 24, 2004 and December 5, 2007 totaling a 22 percent permanent impairment of the right upper extremity due to partial lateral and medial meniscectomies.[2]

On October 22, 2007 Dr. W. Joseph Absi, an attending Board-certified orthopedic surgeon, diagnosed a lateral meniscal tear and partial anterior cruciate ligament (ACL) tear. He performed an arthroscopic partial lateral meniscectomy on November 29, 2007, with chondroplasty of the lateral medial and femoral condyles. The Office approved the procedure. Following surgery, appellant experienced right knee effusion requiring drainage on December 4 and 21, 2007. On December 24, 2007 he returned to limited-duty work.

In a February 22, 2008 report, Dr. Absi released appellant to full duty. He opined that the November 29, 2007 surgery resulted in an additional two percent impairment to the right lower extremity. Dr. Absi submitted July and August 2008 progress reports noting intermittent right knee swelling due to postsurgical osteoarthritis. He noted permanent work restrictions.

On October 2, 2008 appellant claimed a schedule award. The Office asked an Office medical adviser to review the medical record and provide an impairment rating according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* "hereinafter" (A.M.A., *Guides*).

In an October 15, 2008 report, an Office medical adviser reviewed the record and found that appellant had reached maximum medical improvement as of February 22, 2008. The medical adviser opined that he was not entitled to an increased schedule award as he already received the maximum 22 percent rating under the A.M.A., *Guides* for medial and lateral meniscectomy.

In a January 29, 2009 letter, the Office asked Dr. Absi to review the Office medical adviser's October 15, 2008 report and indicate whether he concurred. Dr. Absi replied by February 6, 2009 letter that appellant was entitled to an additional two percent schedule award for the November 29, 2007 partial lateral meniscectomy. On February 17, 2009 an Office medical adviser reviewed Dr. Absi's response and noted that according to Table 17-33, page 546[3] of the A.M.A., *Guides*, a partial lateral meniscectomy equaled a two percent impairment of

[1] The two prior injuries and schedule awards were processed under a separate claim number. The Office doubled this claim with the present claim on January 16, 2008.

[2] By decision dated February 26, 2008, the Office found that appellant was not entitled to wage-loss compensation from December 7, 2007 to January 4, 2008 as he was still receiving schedule award payments under the prior claim for right lower extremity impairment. By decision dated March 6, 2008, it found a $912.72 overpayment of compensation as appellant was paid wage-loss compensation while receiving a schedule award for impairment of the same body part. By decision dated April 15, 2008, the Office denied appellant's request for a hearing on the final overpayment determination. These decisions are not before the Board on the present appeal.

[3] Table 17-33, page 546 of the fifth edition of the A.M.A., *Guides* is entitled "Impairment Estimates for Certain Lower Extremity Impairments. According to Table 17-33, a partial medial or lateral meniscectomy equals a two percent impairment of the lower extremity.

the involved lower extremity. As appellant had already received a two percent schedule award for partial lateral meniscectomy, he was not entitled to receive a second award for the repeat November 29, 2007 procedure.

By decision dated February 19, 2009, the Office denied appellant's claim for an augmented schedule award on the grounds that the medical evidence did not establish impairment greater than the 22 percent previously awarded. It found that he was not entitled to an additional award for a repeat partial lateral meniscectomy.

In an October 23, 2009 letter, appellant requested reconsideration. He asserted that he was entitled to an augmented schedule award for osteoarthritis and recurrent effusions in the right knee. Appellant submitted additional evidence.

In reports from April 3 to October 19, 2009, Dr. Absi opined that the November 29, 2007 surgery caused osteoarthritis with effusion in the right knee. June 2, 2009 x-rays of the right knee showed increased degenerative changes when compared to 2004 studies. Dr. Absi drained appellant's knee on May 29, June 5 and September 23, 2009 and administered a series of injections. He reiterated that the November 29, 2007 partial lateral meniscectomy entitled appellant to an additional two percent impairment rating.

An Office medical adviser reviewed Dr. Absi's additional reports. The medical adviser opined that appellant reached maximum medical improvement on July 6, 2009. Referring to Table 16-3, page 509[4] of the sixth edition of the A.M.A., *Guides*,[5] the Office medical adviser found that appellant had a Class 2 or moderate impairment, with a default grade of C or 22 percent. He applied a grade modifier of zero as appellant also had a functional history (GMFH) of two, equal to the impairment class of two. The Office medical adviser found that appellant was not entitled to an additional award as he had received schedule awards for a 22 percent impairment of the right lower extremity.

In a December 4, 2009 letter, the Office afforded Dr. Absi 30 days to provide an impairment rating of appellant's right lower extremity according to the sixth edition of the A.M.A., *Guides*. The record contains an unsigned, undated response on the face of the December 4, 2009 letter, stating that appellant had reached maximum medical improvement and was entitled to an additional two percent schedule award for the November 29, 2007 partial lateral meniscectomy, pain and intermittent swelling.

By decision dated January 7, 2010, the Office denied appellant's claim for an additional schedule award on the grounds that the medical evidence did not establish more than a 22 percent impairment of the right lower extremity, for which he had already been issued schedule awards. It found that the December 4, 2009 letter did not constitute medical evidence as it was not signed by a physician.

[4] Table 16-3, page 509 of the sixth edition of the A.M.A., *Guides* is entitled "Knee Regional Grid -- Lower Extremity Impairments."

[5] For schedule awards issued after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act[6] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a mater which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[7] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[8]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[9] Under the sixth edition, the evaluator identifies 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).[10] The net adjustment formula is (GMFH-CDX) + (GMPE - DCX) + (GMCS- CDX).

ANALYSIS

The Office accepted that appellant sustained right lateral and medial meniscal tears, a right lateral collateral ligament sprain, synovitis and internal derangement of the right knee in three separate work incidents. Appellant underwent three arthroscopic surgeries, including two partial lateral meniscectomies. He received schedule awards for a total 22 percent impairment of the right lower extremity. Appellant claimed an additional schedule award on October 2, 2008, asserting that a November 29, 2007 repeat partial lateral meniscectomy warranted an additional two percent impairment of the right lower extremity. He submitted reports from Dr. Absi, an attending Board-certified orthopedic surgeon, finding that he had attained maximum medical improvement. An Office medical adviser opined that appellant was not entitled to an additional schedule award as a prior award included a two percent impairment for partial lateral meniscectomy under the fifth edition of the A.M.A., *Guides*. By February 19, 2009 decision, the Office denied appellant's schedule award claim.

[6] 5 U.S.C. §§ 8101-8193.

[7] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010). *See also* FECA Bulletin No. 09-03 (issued March 15, 2009).

[9] A.M.A., *Guides* (6th ed., 2008), page 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[10] A.M.A., *Guides* (6th ed., 2008), pp. 494-531.

Appellant requested reconsideration. He submitted new reports from Dr. Absi finding an additional two percent impairment of the right lower extremity due to the November 29, 2007 partial lateral meniscectomy.

An Office medical adviser reviewed Dr. Absi's reports and submitted a September 10, 2009 impairment rating utilizing the sixth edition of the A.M.A., *Guides* then in effect. The medical adviser concurred that appellant had reached maximum medical improvement. Using the knee regional grid on page 509 of the A.M.A., *Guides*, he found a Class 2 impairment of the right lower extremity, with a default grade of C or 22 percent. The Office medical adviser explained that there were no applicable grade modifiers as the functional history (GMFH) and impairment class were equal. The medical adviser found that appellant was not entitled to an additional award as he already received schedule awards for a 22 percent impairment of the right lower extremity.

The Board finds that the Office medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Absi's clinical findings. Also, there is no medical evidence of record utilizing the appropriate elements of the sixth edition of the A.M.A., *Guides* demonstrating a greater percentage of permanent impairment. Therefore, the Office properly relied on the Office medical adviser's assessment of a 22 percent impairment of the right lower extremity.

On appeal, appellant asserted that a new, signed copy of Dr. Absi's December 4, 2009 letter established an additional two percent impairment of the right leg. The copy of the letter submitted to the Office on December 21, 2009 was unsigned. In its January 7, 2010 decision, the Office found that the unsigned letter was not probative medical evidence. This ruling follows the Board's well-established precedent that medical documents that do not contain a physician's signature have no probative medical value.[11] Submitting a signed copy of the letter on appeal does not cure the original defect, as the Board may not consider new evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case.[12] Appellant may submit such evidence to the Office accompanying a valid request for reconsideration.

CONCLUSION

The Board finds that appellant has not established that he sustained more than a 22 percent impairment of the right lower extremity, for which he received schedule awards.

[11] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2010 is affirmed.

Issued: January 25, 2011
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