

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

R.B., Appellant

and

**U.S. POSTAL SERVICE, EAST AUSTIN POST
OFFICE, Austin, TX, Employer**

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**Docket No. 10-2010
Issued: May 12, 2011**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2010 appellant filed a timely appeal from a June 28, 2010 decision of the Office of Workers' Compensation Programs regarding a schedule award. Pursuant to the Federal Employees' Compensation Act¹ and 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 established that he sustained more than a three percent permanent impairment of the left lower extremity, for which he received a schedule award.

On appeal, counsel asserts that the Office's June 28, 2010 schedule award decision is contrary to fact and law.

¹ 5 U.S.C. §§ 8101 *et seq.*

FACTUAL HISTORY

The Office accepted that on or before February 28, 2001 appellant, then a 56-year-old letter carrier, sustained a torn medial meniscus of the left knee.² On April 20, 2001 appellant underwent a partial medial meniscectomy. Dr. Gordon P. Marshall, an attending Board-certified orthopedic surgeon, released appellant to full duty as of June 19, 2001. He noted on February 18, 2002 that appellant had residual chondromalacia of the medial femoral condyle and patella.

The Office later accepted that appellant sustained a right knee sprain on September 20, 2004.³ On March 20, 2007 it obtained a second opinion report from Dr. Jonathan Clark Race, a Board-certified orthopedic surgeon, to determine the appropriate percentage of permanent impairment to appellant's right knee. Dr. Race noted briefly that the left knee showed no instability, crepitus or effusion.

On November 6, 2008 appellant claimed a schedule award.⁴ In a January 12, 2009 letter, it requested that he submit a report from his attending physician addressing whether he had attained maximum medical improvement and offering an impairment rating according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (hereinafter).

By decision dated February 17, 2009, the Office denied appellant's schedule award claim as he did not submit a finding of maximum medical improvement or an impairment rating.

Following a June 15, 2009 hearing, appellant submitted a June 23, 2009 impairment rating from Dr. John W. Ellis, an attending Board-certified family practitioner. On examination of the left knee Dr. Ellis found palpable and audible crepitation, flexion limited to 81 degrees, negative 6 degrees of extension and moderate laxity of the medial collateral and anterior cruciate ligaments. He noted that appellant scored 108 on the A.M.A., *Guides* PDQ pain questionnaire and 22 on the American Academy of Orthopedic Surgeons (AAOS) pain questionnaire. Dr. Ellis diagnosed a torn lateral meniscus, traumatic arthritis and moderate postsurgical ligament laxity. He opined that appellant had reached maximum medical improvement. Referring to the sixth edition of the A.M.A., *Guides*, Dr. Ellis found moderate or class 2 ligament laxity according to Table 16-3, page 510,⁵ equaling a 22 percent impairment of the left leg, with an additional

² The Office initially denied the claim by September 10, 2001 decision on the grounds that causal relationship was not established. Following additional development, it accepted the claim by decision dated and finalized March 18, 2002. Appellant retired from the employing establishment in April 2005.

³ File No. xxxxxx723. The Office doubled File No. xxxxxx723 under master File No. xxxxxx480 in January 2010.

⁴ On October 26, 2007 appellant submitted an incomplete (Form CA-7) claiming a schedule award. In letters dated November 27, 2007 and September 22, 2008, the Office requested that he submit a complete claim form, as well as an impairment rating from an attending physician.

⁵ Table 16-3, pages 509-10 of the sixth edition of the A.M.A., *Guides* is entitled "Knee Regional Grid -- Lower Extremity Impairments."

3 percent for partial lateral meniscectomy according to Table 16-3, page 509. He combined these impairments to total a 24 percent impairment of the left lower extremity.

By decision dated and finalized September 15, 2009, an Office hearing representative set aside the Office's February 17, 2009 decision and remanded the case for referral to an Office medical adviser for calculation of the appropriate percentage of permanent impairment.

In an October 6, 2009 report, an Office medical adviser noted that Dr. Race found no instability or crepitus in the left knee while Dr. Ellis observed moderate ligament laxity and significant crepitus. The medical adviser opined that these discrepancies warranted referral to a Board-certified physiatrist to obtain an impairment evaluation.

On October 20, 2009 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Zvi Kalisky, a Board-certified physiatrist, to obtain an impairment rating. In a November 18, 2009 report, Dr. Kalisky reviewed the medical record and statement of accepted facts. He noted a grade modifier for Functional History (GMFH) of two as appellant walked with an antalgic limp. On examination of the left knee, Dr. Kalisky found tenderness to palpation over the medial joint line, no mediolateral instability, mild extensor weakness and a range of motion of 0 to 100 degrees. He also noted an AAOS score of 40. Dr. Kalisky diagnosed status post left knee medial meniscus tear, status post partial medial meniscectomy with chondroplasty of the medial femoral condyle and patella and nonoccupational chondromalacia and osteoarthritis of the left knee. He found that appellant reached maximum medical improvement. Referring to the sixth edition of the A.M.A., *Guides*, Dr. Kalisky found that, according to Table 16-3, appellant had an impairment class for the diagnosed condition (CDX) of one for meniscal injury with partial medial meniscectomy, with a default value of C or two percent and a grade modifier for Physical Examination (GMPE) of two for moderate clinical findings. He noted that a grade modifier Clinical Studies (GMCS) was not applicable as the CDX was based in part on magnetic resonance imaging scan findings. Using the net adjustment formula of $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$, Dr. Kalisky found a +2 modifier, moving the default value of C to E, equaling a three percent impairment of the left lower extremity.

In a December 23, 2009 report, an Office medical adviser reviewed Dr. Kalisky's report and opined that appellant reached maximum medical improvement as of November 18, 2009. He applied the net adjustment formula of $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$. The medical adviser concurred that $(2-1) + (2-1) + (0)$ equaled a +2 modifier, raising the CDX impairment from C to E, equaling a three percent impairment of the left lower extremity.

By decision dated January 11, 2010, the Office issued appellant a schedule award for a three percent impairment of the left lower extremity. The period of the award ran from November 8, 2009 to February 13, 2010.

In a January 19, 2010 letter, appellant requested a telephonic hearing, held April 13, 2010. He asserted that Dr. Kalisky did not perform a thorough examination. The hearing representative left the record open for 30 days to allow counsel to submit a new report from Dr. Ellis. Appellant did not submit any additional evidence.

By decision dated and finalized June 28, 2010, the Office hearing representative affirmed the January 11, 2010 decision. She found that the Office medical adviser applied the appropriate portions of the A.M.A., *Guides* to Dr. Kalisky's clinical findings to rate a three percent impairment of the left lower extremity.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of the Act⁶ 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 matter 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 (ICF) Disability and Health.⁹ Under the sixth edition, the evaluator identifies the impairment class for the CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.¹⁰ The net adjustment formula is (GMFH - CDX) + (GMPE - DCX) + (GMCS - CDX).

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a torn medial meniscus of the left knee necessitating a partial medial meniscectomy. On November 6, 2008 appellant claimed a schedule award.

The Office obtained a second opinion from Dr. Kalisky, a Board-certified physiatrist, who performed a thorough clinical examination, noted detailed clinical findings and reviewed the medical record and statement of accepted facts. Applying Table 16-3 of the A.M.A., *Guides* to his findings, Dr. Kalisky calculated a three percent impairment of the left leg due to status post medial meniscectomy, with grade modifiers for functional history and physical examination findings. An Office medical adviser reviewed Dr. Kalisky's report and agreed with his assessment of a three percent impairment of the left leg. Based on the Office medical adviser's

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, Example 1 (January 2010).

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

¹⁰ *Id.*, at pp. 494-531.

review of Dr. Kalisky's rating, the Office granted appellant a schedule award for a three percent impairment of the left lower extremity. Appellant requested a hearing, at which he contended that Dr. Kalisky did not perform an adequate examination. By June 28, 2010 decision, the Office affirmed the prior schedule award.

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. Kalisky's clinical findings. The Office medical adviser's calculations were accurate. 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. The Board notes that although counsel indicated at hearing that he would submit additional medical evidence, he did not do so. The Office properly relied on the Office medical adviser's rating of a three percent impairment of the left lower extremity.

On appeal, counsel contends that the Office's June 28, 2010 decision is contrary to fact and law. As stated, the weight of the medical evidence does not establish that appellant sustained more than a three percent impairment of the left lower extremity, for which he received a schedule award. The Office medical adviser properly applied the A.M.A., *Guides* to Dr. Kalisky's clinical findings. There is no medical evidence of record supporting greater impairment.

CONCLUSION

The Board finds that appellant has three percent permanent impairment of the left lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 28, 2010 is affirmed.

Issued: May 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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