United States Department of Labor
Employees' Compensation Appeals Board

I.F., Appellant	)	
And	)	**Docket No. 11-364**
	)	**Issued: October 5, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Richmond, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 1, 2010 appellant filed a timely appeal from a September 21, 2010 decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)[1] 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 sustained more than a two percent permanent impairment of the left lower extremity, for which he received a schedule award.

On appeal, appellant asserts that the accepted injury was more serious than the percentage awarded, as he could no longer run, help his children practice sports, or wear hard-soled shoes.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on June 16, 2009 appellant, then a 41-year-old mail handler, sustained a sprained left lateral collateral ligament and chondromalacia of the left patella when loading a postal container.

In a June 30, 2009 report, Dr. William E. Nordt, III, an attending Board-certified orthopedic surgeon, diagnosed transient left knee pain and swelling, chondrocalcinosis, pes anserine bursitis, a flexion contracture with remote history of right knee arthroscopy and a possible medial meniscal tear. On July 9, 2009 he recommended left knee arthroscopy. Dr. Nordt obtained a July 29, 2009 magnetic resonance imaging (MRI) scan of the left knee showing cartilage blistering in the medial femoral condyle and degeneration in the posterior horn in the medial meniscus. He held appellant off work from June 16, 2009 onward. Dr. Nordt administered periodic steroid injections.

On October 8, 2009 Dr. Nordt performed an arthroscopic chondroplasty of the medial and patellofemoral compartments with medial and lateral synovectomy, approved by OWCP. He diagnosed degenerative disease of both compartments with crystal deposition disease in the synovium. Dr. Nordt held appellant off work through November 16, 2009, when he released appellant to sedentary duty. Appellant accepted a light-duty assignment on December 3, 2009 and resumed work. OWCP issued appropriate wage-loss compensation for work absences.

In a March 18, 2010 report and March 19, 2010 work capacity evaluation (Form OWCP-5c), Dr. Nordt stated that appellant had reached maximum medical improvement, with periodic pain and swelling necessitating work absences.

On February 24, 2010 appellant claimed a schedule award. In a March 8, 2010 letter, OWCP advised him to obtain an impairment rating from his attending physician under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A., *Guides*").

In a May 21, 2010 impairment rating, Dr. Thomas G. Franck, an attending physician Board-certified in family medicine and sports medicine, provided a history of injury and treatment. He noted that Dr. Nordt had found appellant at maximum medical improvement as of March 18, 2010. On examination of the left knee, Dr. Franck observed mild anterior swelling, synovial thickening, a lack of 15 degrees extension, patellar crepitus and a two centimeter (cm) atrophy of the left quadriceps. Referring to Table 16-3 of the sixth edition of the A.M.A., *Guides*, he found a impairment class for the diagnosed condition (CDX) of one for primary knee arthritis, with a default value of C or seven percent.[2] Appellant completed an American Academy of Orthopedic Surgeons (AAOS) questionnaire, with a standardized mean score of 71 and a normative score of 36. Dr. Franck therefore noted a modifier for Functional History (GMFH) of one according to Table 16-6,[3] and a grade modifier for Physical Examination

[2] Table 16-3, pages 509-11 of the sixth edition of the A.M.A., *Guides* is entitled "Knee Regional Grid -- Lower Extremity Impairments."

[3] Table 16-6, page 516 of the sixth edition of the A.M.A., *Guides* is entitled "Functional History Adjustment -- Lower Extremity Impairments."

(GMPE) of two according to Table 16-7,[4] due to patellar compression and muscle atrophy. He noted that a modifier for Clinical Studies (GMCS) was not applicable as the CDX was based in part on imaging findings. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Franck found a +1 modifier, moving the default value of C to D, equaling an eight percent impairment of the left lower extremity.

In an August 11, 2010 report, an OWCP medical adviser reviewed Dr. Franck's report and a statement of accepted facts. The medical adviser concurred that appellant reached maximum medical improvement as of March 18, 2010. The medical adviser opined that Dr. Franck's findings did not support an eight percent impairment rating as the diagnosis of knee joint arthritis could not be verified. Dr. Franck did not provide joint space intervals obtained from weight bearing x-rays. The medical adviser used a diagnosis of "left knee strain," with a class 1 rating for intermittent pain. According to Table 16-3, a left knee strain equaled a default two percent lower extremity impairment. The medical adviser found a GMFH of one for "mild problems," a GMPE of two for thigh atrophy, and a GMCS of one for "mild problems" revealed by clinical studies. Applying the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (1-1) + (2-1) + (1-1), the medical adviser found a +1 modifier, raising the CDX impairment from C to D, representing two percent impairment of the left lower extremity. The medical adviser found no impairment for restricted extension, as Table 16-23[5] only provided impairment for a flexion contracture.

By decision dated September 21, 2010, OWCP granted appellant a schedule award for a two percent impairment of the left lower extremity. The period of the award ran from May 6 to June 15, 2010.

LEGAL PRECEDENT

The schedule award provisions of FECA provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, 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 OWCP. 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[6] For schedule awards beginning May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[7]

[4] Table 16-7, page 517 of the sixth edition of the A.M.A., *Guides* is entitled "Physical Examination Adjustment -- Lower Extremity Impairments."

[5] Table 16-23, page 549 of the sixth edition of the A.M.A., *Guides* is entitled "Knee Motion Impairments."

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

[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).

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).[8] Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

ANALYSIS

OWCP accepted that appellant sustained a sprained left collateral ligament and chondromalacia of the left patella. On October 8, 2009 appellant underwent an arthroscopic chondroplasty of the medial and patellofemoral compartments and a medial and lateral synovectomy. He claimed a schedule award on February 24, 2010.

Dr. Nordt, the attending Board-certified orthopedic surgeon, opined that appellant reached maximum medical improvement on March 18, 2010. Dr. Franck, an attending physician Board-certified in sports medicine and family practice, performed an impairment rating according to the sixth edition of the A.M.A., *Guides*. He offered a diagnosis-based impairment (CDX) of primary knee arthritis, with a net grade modifier of +1, resulting in an eight percent impairment of the left leg.

OWCP referred Dr. Franck's report to an OWCP medical adviser for review. In an August 11, 2010 report, an OWCP medical adviser noted that Dr. Franck based his impairment rating on a diagnosis not supported by the clinical findings. The medical adviser explained that, according to the A.M.A., *Guides*, a diagnosis of knee arthritis must be based on weight-bearing x-rays demonstrating reduced cartilage intervals. There were no such x-rays of record. The medical adviser also explained that there was no impairment warranted for a loss of 15 degrees extension according to Table 1-23. An OWCP medical adviser based his impairment rating on the accepted diagnosis of a left knee strain, with a CDX of class 1 and a default lower extremity impairment of two percent according to Table 16-3. He found a GMFH and GMCS of one for "mild problems," and a GMPE of two for thigh atrophy. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), the medical adviser found a +1 modifier, which did not raise the impairment rating above two percent.

The Board finds that an OWCP medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Franck's clinical findings. An OWCP medical adviser's calculations were accurate. There is no medical evidence of record utilizing the appropriate protocols of the sixth edition of the A.M.A., *Guides* to establish greater impairment. OWCP properly relied on the medical adviser's rating of a two percent impairment of the left leg.

[8] 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."

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

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

On appeal, appellant contends that he sustained a greater percentage of impairment as the accepted left knee injury continued to limit his activities, preventing him from wearing hard-soled shoes, running and helping his teenaged children train for sports. The number of weeks of compensation under a schedule award is determined by the schedule at section 8107. As appellant's impairment is two percent of the leg, he is entitled to two percent of 288 weeks or 5.76 weeks of compensation as awarded. Moreover, the amount payable pursuant to a schedule award does not take into account the effect the impairment has on employment opportunities, sports hobbies or other lifestyle activities.[10]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 21, 2010 is affirmed.

Issued: October 5, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[10] *See Dennis R. Stark*, 57 ECAB 306 (2006); *Ruben Franco*, 54 ECAB 496 (2003).