

**W.J., Appellant**

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, Philadelphia, PA,  
Employer**

*Appearances:*

### Case Submitted on the Record

Before:

## ***JURISDICTION***

**ISSUE**

## **FACTUAL HISTORY**

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

compensation benefits effective November 27, 2006 on the grounds that he no longer had any residuals or disability causally related to his December 2, 2002 employment injury. The determination as to whether appellant was entitled to a schedule award for a permanent impairment of his left lower extremity was set aside.<sup>2</sup> Dr. Kevin Hanley, a Board-certified orthopedic surgeon serving as a second opinion examiner, found that appellant's employment-related conditions of lumbar and left knee strains had resolved without residuals and that his present symptomatology and conditions were due to his preexisting underlying degenerative condition. The Board directed that OWCP further develop whether appellant had any left leg impairment causally related to his work injury. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to the present appeal are set forth.

On July 11, 2006 Dr. Hanley performed a second opinion evaluation. He reviewed medical reports and noted examination findings. Dr. Hanley advised that review of the medical record indicated that left knee symptoms had resolved. Examination revealed appellant to be overweight and deconditioned. While appellant had mild limitation of motion in the lumbar spine, Dr. Hanley opined that this was due to "body habitus and degenerative change." Knee examination was normal. Dr. Hanley diagnosed history of musculoligamentous straining injury superimposed on degenerative disc disease and spinal stenosis, lumbar spine and resolved sprain/strain of the knee. He opined that appellant no longer had any affects of the work injury. Dr. Hanley advised that the work injury temporarily aggravated appellant's underlying problem of spinal stenosis and degenerative disease. He advised that appellant's continuing and residual symptoms were due to appellant's obesity, deconditioning and underlying degenerative process and no longer represented acute symptoms coming from an acute injury. Dr. Hanley opined that appellant was capable of returning to work activities without restriction, as his symptoms had resolved from the work-related injury. He further opined no additional medical treatment was necessary.

In an August 22, 2006 letter, appellant's counsel indicated that appellant sought a schedule award. In a June 29, 2006 report, Dr. Nicholas Diamond, an osteopath, noted the history of injury and his review of the medical file. He noted appellant's complaints of low back pain with radicular pain down the bilateral lower extremities as well as left knee pain and stiffness on an intermittent basis and presented his examination findings. For the lumbar spine, examination revealed paravertebral muscle spasm and tenderness over the posterior midline. Bilateral tenderness was noted on the iliolumbar ligamentous and posterior superior iliac spine. Appellant had restricted motion on forward flexion, backward extension and left and right lateral flexion. For the left knee, examination revealed peripatellar tenderness along the medial joint line and medial joint space and over the medial femoral condyle. Range of motion was restricted with pain on flexion-extension. Dr. Diamond diagnosed central herniated nucleus pulposus L2-L3, L3-L4, L4-L5 with disc bulge at L5-S1, magnetic resonance imaging (MRI) scan positive; right lumbar L4-L5-S1 radiculopathy, electromyogram (EMG) positive; chronic post-traumatic lumbosacral strain and sprain; post-traumatic internal derangement left knee with medial meniscus tear; and aggravation of preexisting quiescent osteoarthritis of the lumbosacral spine.

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<sup>2</sup> Docket No. 08-2409 (issued September 11, 2009). On December 2, 2002 appellant, a 40-year-old transportation security screener, injured his low back and left leg when he slipped and fell at work. OWCP accepted the claim for lumbar and left knee strains. In an August 24, 2004 decision, it reduced his wage-loss compensation based on his actual earnings as a security screener/exit lane monitor.

Dr. Diamond opined that appellant's subjective and objective findings were due to the December 2, 2002 work injury. He further opined that, under the New Jersey Workers' Compensation Act, appellant had three percent left leg impairment based on strength deficits in the knee and ankle as well as pain.

On November 20, 2006 an OWCP medical adviser opined that there was no ratable impairment of the left leg. He stated that the accepted condition of sprain/strain of the left knee had resolved with no residual defects. The medical adviser noted that Dr. Diamond's findings were inconsistent with many physical examinations documented in the record. He also advised that an impairment rating for pain was inappropriate as the left knee condition had resolved. The medical adviser concluded that there was no basis for a schedule award.

On December 18, 2009 Dr. Diamond provided an updated impairment rating based on a June 29, 2006 examination and the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*). He opined that appellant reached maximum medical improvement on June 29, 2006. Dr. Diamond found that appellant had two percent left lower extremity impairment under Table 15-3, page 509, for a class 1 left knee medial meniscal tear. He assigned a grade modifier of 2 for functional history due to difficulty with postural care, employment under Table 16-5, page 516; a grade modifier of one for physical examination under Table 16-7, page 517; and found grade modifier for clinical studies not applicable. Dr. Diamond applied the net adjustment formula and found a net adjustment of one. He opined that appellant had two percent left lower extremity impairment after net adjustment.

On March 11, 2010 an OWCP medical adviser reviewed Dr. Diamond's updated report and found there was no ratable impairment of the left lower extremity. He stated that the accepted condition had long since resolved and there were no significant deficits from this condition. While Dr. Diamond rated appellant for left medial meniscal tear, this was not an accepted condition and no new diagnostic evidence was provided. He stated that an impairment rating for pain was inappropriate and the accepted left knee sprain had resolved without impairment. The medical adviser also stated there was no evidence of a meniscal tear. He concluded there was no basis for a left knee impairment or any ratable diagnosis related to the accepted condition.

By decision dated March 25, 2010, OWCP denied appellant's claim for a schedule award. It found the medical evidence was insufficient to establish any permanent impairment to a scheduled member due to the accepted work injury.

On March 30, 2010 appellant, through his representative, requested a telephonic hearing, which was held on July 9, 2010. Subsequent to the hearing, OWCP received a July 23, 2010 narrative report from Dr. Diamond. Dr. Diamond indicated that the December 18, 2009 report was based on appellant's evaluation of June 29, 2006. He stated that appellant's December 16, 2002 MRI scan of the left knee revealed some myxoid degenerative posterior horn medial meniscus changes and that his physical examination of June 29, 2006 revealed medial joint line tenderness and medial joint space tenderness. Dr. Diamond opined that appellant had impairment due to a left knee medial meniscal tear. He further stated that appellant's June 29, 2006 examination revealed a significant left knee injury as there was weakness in the left lower extremity with quadriceps strength and gastrocnemius strength and a one centimeter atrophy of

the left calf, as compared to the right calf. Dr. Diamond noted that OWCP's medical adviser failed to address appellant's thigh or calf measurements.

By decision dated October 21, 2010, an OWCP hearing representative affirmed the March 25, 2010 decision. The hearing representative determined that Dr. Diamond's July 23, 2010 report was based on examination findings from the June 29, 2006 evaluation, which was previously reviewed by an OWCP medical adviser, and offered no new findings or discussion to warrant entitlement to a schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of FECA and its implementing regulations<sup>3</sup> 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.<sup>4</sup> For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates 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 implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

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.<sup>7</sup> The Board notes that, before applying the A.M.A., *Guides*, OWCP must determine whether the claimed impairment of a scheduled member is causally related to the accepted work injury.<sup>8</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained lumbar strain and left knee sprain while in the performance of duty on December 2, 2002. The Board previously affirmed OWCP's termination of appellant's compensation benefits effective November 27, 2006 on the grounds that the weight of the medical evidence, as represented by the second opinion examiner, Dr. Hanley, reflected that the accepted lumbar and left knee sprains, had resolved and appellant's current symptoms were due to obesity, deconditioning and the underlying degenerative process.

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<sup>3</sup> 20 C.F.R. § 10.404; 5 U.S.C. § 8017.

<sup>4</sup> *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

<sup>5</sup> *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>6</sup> 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).

<sup>7</sup> *Veronica Williams*, 56 ECAB 367, 370 (2005).

<sup>8</sup> *Michael S. Mina*, 57 ECAB 379, 385 (2006).

Appellant requested schedule award compensation. He has the burden of proof to establish that the condition for which a schedule award is being sought is causally related to his employment.<sup>9</sup>

The Board finds that the medical evidence is not sufficient to establish permanent impairment to appellant's left leg due to the accepted conditions of lumbar strain and left knee strain. Dr. Diamond, the attending osteopath, examined appellant on June 29, 2006. He noted that appellant's current conditions of herniated disc, right lumbar radiculopathy, chronic post-traumatic lumbosacral strain and sprain, post-traumatic internal derangement left knee with medial meniscus tear; and aggravation of preexisting quiescent osteoarthritis of the lumbosacral spine were due to the December 2, 2002 work injury. Dr. Diamond provided insufficient explanation or medical rationale as to how any of these conditions were causally related to the employment injury and not due to his preexisting degenerative disease.<sup>10</sup> Furthermore, he did not provide adequate as to why the diagnosed conditions that were employment related.<sup>11</sup> Dr. Diamond's subsequent reports of December 18, 2009 and July 23, 2010 failed to offer any additional rationale or explanation as to why the accepted lumbar strain and left knee sprain persisted or how the left medial meniscal tear, which was not accepted, was found employment related. His subsequent reports were based on his June 29, 2006 examination findings. Dr. Diamond's reports are insufficient to establish a continuing employment-related disability or medical condition after November 27, 2006, the date appellant's compensation benefits were terminated, causally related to his December 2, 2002 employment injury. It is not established that the rated impairment is causally related to an accepted work injury.<sup>12</sup>

An OWCP medical adviser on November 20, 2006 found there was no basis on which to issue a schedule award are the accepted conditions had resolved. The medical adviser did not find that there was any schedule impairment causally related to appellant's accepted conditions. Appellant did not submit any other medical evidence sufficient to establish a work-related condition that caused physical impairment to a scheduled body member.

On appeal, appellant's representative argues that Dr. Diamond's December 18, 2009 and July 23, 2010 reports are sufficient to create a conflict in medical evidence. As discussed, Dr. Diamond's impairment evaluations are of diminished probative value as he failed to provide a fully-rationalized medical opinion explaining the issue of causal relationship of the diagnosed meniscus tear to the December 2, 2002 employment injury. The injury was accepted for lumbar and left knee sprains that were found to have resolved. Dr. Diamond did not sufficiently explain how the claimed impairment arose from the accepted work injury and his opinion is not

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<sup>9</sup> *Veronica Williams, supra* note 7.

<sup>10</sup> *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>11</sup> Where a claimant claims that a condition not accepted or approved by OWCP was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence. *T.M.*, Docket No. 08-975 (issued February 6, 2009).

<sup>12</sup> The Board notes that Dr. Diamond's June 29, 2006 impairment rating was based under the New Jersey Workers' Compensation Act. Schedule awards under FECA are to be based on the A.M.A., *Guides*. An estimate of permanent impairment is irrelevant and not probative where it is not based on the A.M.A., *Guides*. *Shalanya Ellison*, 56 ECAB 150 (2004).

sufficient to create a conflict in medical evidence with the medical adviser. The need for detailed medical rationale is particularly important in a situation such as this where OWCP found, and the Board previously affirmed, that all residuals of the accepted conditions had ceased.

The medical evidence does not establish that appellant has permanent impairment to a scheduled member of the body causally related to his accepted injury. Consequently appellant has not established entitlement to a schedule award.

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

### **CONCLUSION**

The Board finds that appellant has not established entitlement to a schedule award.

### **ORDER**

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

Issued: October 7, 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