United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 11-574**
	)	**Issued: October 21, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Akron, OH, 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 January 6, 2011 appellant filed a timely appeal from a September 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding his schedule award claim. 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 the claim.

ISSUE

The issue is whether appellant has more than 13 percent impairment of the right leg, for which he received a schedule award.

FACTUAL HISTORY

On January 2, 2009 appellant, then a 49-year-old dock mail handler, twisted his right knee while pushing an all purpose cart (APC) up a dock plate. OWCP accepted the claim for right medial meniscus tear and recurrent right knee anterior cruciate ligament (ACL) rupture. It

[1] 5 U.S.C. §§ 8101-8193.

paid appropriate benefits, including March 26, 2009 surgery which involved a right knee arthroscopy, partial medial meniscectomy and ACL reconstruction surgery. Secondary to that surgery appellant incurred arthrofibrosis and underwent a manipulation under anesthesia on July 16, 2009, which OWCP authorized. He returned to full-time work on September 21, 2009.

On September 18, 2009 appellant filed a schedule award claim. As the treating physician, Dr. Douglas J. Chonko, an osteopath, did not perform impairment evaluations, Dr. Steven A. Cremer, a Board-certified physiatrist and associate of Dr. Chonko, rated impairment. In a December 7, 2009 report, Dr. Cremer noted that appellant's work injury resulted in the tear of a previously reconstructed ACL and a medial meniscus injury. He stated that chondromalacia was a nonrelated finding. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), Dr. Cremer opined that appellant had 13 percent right leg impairment. Under Table 16-3, he found the mild laxity of the ACL was a class 1 injury. Dr. Cremer utilized the modifiers and found the net adjustment was +1, which equated to a grade D or 11 percent leg impairment. He stated that the partial meniscectomy was maintained at grade C or two percent lower extremity impairment and was not modified as this was accounted for relative to the ACL injury. The total lower extremity impairment was 13 percent. Dr. Cremer also found that appellant had a mild range of motion impairment which resulted in 10 percent leg impairment under Table 16-23. He noted that range of motion was a stand-alone estimate and was less than the diagnosis-based impairment. Dr. Cremer opined that the greater impairment should be given as the range of motion was included as a component of the physical examination and functional history modifier.

On February 17, 2010 OWCP's medical adviser reviewed the medical record, including Dr. Cremer's December 7, 2009 report. He noted that, while his calculations under the sixth edition of the A.M.A., *Guides* differed from Dr. Cremer's, appellant's right lower extremity impairment remained at 13 percent. Under Table 16-3, page 510, the medical adviser found the right ACL tear with mild laxity was consistent with the class 1 for the diagnosed condition (CDX) with a default impairment of 10 percent. He stated the default impairment was then adjusted as follows: a grade 2 modifier was assigned for Functional History (GMFH); a grade 1 modifier was assigned for Physical Examination (GMPE); and a grade 1 modifier was assigned for Clinical Studies (GMCS). The medical adviser utilized the adjustment formula of (GMFH – CDX) (2-1) + (GMPE – CDX) (1-1) + (GMCS – CDX) (1-1) = a net adjustment of 1. He stated that the net adjustment of 1 moved the default impairment into grade D or 12 percent impairment for the right lower extremity ACL tear. For the right medial meniscus tear, under Table 16-3, page 509 the medical adviser found it to be consistent with a class 1 (CDX) partial meniscus tear, with a default impairment of two percent. Citing page 529 of the A.M.A., *Guides*, he stated that the functional history modifier is only applied to appellant's ACL condition, as it is the highest impairment. Thus, appellant had no grade modifier for functional history. OWCP's medical adviser found a grade 1 modifier for GMPE and a grade 1 modifier for GMCS. He utilized the adjustment formula of (GMFH – CDX) + (GMPE – CDX) (1-1) + (GMCS – CDX) (1-1) = a zero net adjustment. Thus, there was two percent impairment for the right lower meniscus tear. Citing section 16.3f, page 529, the medical adviser then utilized the Combined Values Chart and combined the 12 percent impairment for ACL tear and the 2 percent impairment for the medial meniscus tear and found a total right lower extremity impairment of 13 percent. He opined that

appellant had obtained maximum medical improvement by December 7, 2009, the time of Dr. Cremer's examination.

By decision dated September 20, 2010, OWCP granted appellant a schedule award for 13 percent permanent impairment to the right leg. The award ran for the period December 7, 2009 to August 26, 2010, for 37.44 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and its implementing regulations[3] 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.[4] 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.[5] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6]

The sixth edition requires identifying the impairment class for the diagnosed condition CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[7] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[8]

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury. The Board has explained that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician which is accepted as definitive by OWCP.[9]

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[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

[5] *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[6] 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).

[7] A.M.A., *Guides* 494-531.

[8] *Id.* at 521.

[9] *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.[10]

ANALYSIS

OWCP accepted appellant's claim for right medial meniscus tear and recurrent right knee anterior cruciate ligament rupture. Appellant underwent a right knee arthroscopy, partial medial meniscectomy and ACL reconstruction surgery in March 2009. He also underwent a manipulation under anesthesia on July 16, 2009.

In his December 7, 2009 report, Dr. Cremer noted appellant's history, examined him and rated permanent impairment. The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.[11] Dr. Cremer properly referred to the knee regional grid, Table 16-3, page 509, and determined that, for a mild laxity of the ACL, appellant would be placed in class 1 with a default value of 10 percent. While he found grade modifiers, he failed to identify such modifiers. While Dr. Cremer found the grade modifiers resulted in a net adjustment of 1 or an 11 percent impairment, the Board notes that a net adjustment of 1 would be a grade D or 12 percent impairment. OWCP's medical adviser reviewed Dr. Cremer's examination findings and found grade modifiers of 2 for GMFH, 1 for GMPE and 1 for GMCS under Table 16-6 through Table 16-8 and applied the net adjustment formula.[12] He found a net adjustment of 1. The medical adviser properly determined that a net adjustment of 1 resulted in 12 percent impairment for mild laxity of the ACL.

Regarding the right medial meniscus tear, Dr. Cremer and the medical adviser found under Table 16-3 that it was consistent with a class 1 partial meniscus tear with a default impairment of two percent. Dr. Cremer stated that the partial meniscectomy was not modified, but he did not provide an explanation why. OWCP's medical adviser indicated that a rating for a meniscal injury was appropriate in addition to the rating for the ligament injury and provided a well-rationalized explanation consistent with the A.M.A., *Guides* as to why a grade modifier for functional history was not applicable. Citing page 529 of the A.M.A., *Guides*, he explained the GMFH modifier was only applied to appellant's ACL condition, as it is the highest impairment. The medical adviser found grade modifiers of one for GMPE and GMCS and applied the net adjustment formula.[13] He found a zero net adjustment. The medical adviser determined the class 1 impairment without adjustment for the partial meniscectomy, equated to two percent impairment. OWCP's medical adviser then properly combined the 12 percent impairment for the ACL with the 2 percent impairment for the partial meniscectomy to find a total right lower

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

[11] 20 C.F.R. § 10.404.

[12] *See* A.M.A., *Guides* 516, 521.

[13] *Id.*

extremity impairment of 13 percent.[14] The Board finds there is no medical evidence conforming with the A.M.A., *Guides* which establishes more than 13 percent impairment of the right leg.

On appeal appellant questions why the date of maximum medical improvement was the date of his examination by Dr. Cremer, December 7, 2009, as he returned to full duty about three months prior on September 18, 2009. Appellant asserted that he was entitled to about 10 more weeks of compensation. As noted, the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement. This determination is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician which is accepted as definitive by OWCP.[15] Here, December 7, 2009 is the date of the examination on which the impairment rating is based. This comports with Board precedent and there is no medical evidence establishing an earlier date of maximum medical improvement. The Board notes that appellant appears to be under the impression that, if the date of maximum medical improvement were earlier, he would receive a greater amount of compensation. Appellant has 13 percent right leg impairment. The date of maximum medical improvement only pertains to the date on which the schedule award will begin, not the amount of the award. For complete or 100 percent impairment of a leg, a claimant is entitled to a maximum of 288 weeks of compensation. As appellant has 13 percent impairment of the right leg, he is entitled to 13 percent of 288 weeks of compensation, or 37.44 weeks, which was the amount of compensation awarded in this case.[16] Neither OWCP nor the Board has the authority to enlarge the terms of FECA or to make an award of benefits under any terms other than those specified in the statute.[17] Thus, OWCP properly issued a schedule award for 37.44 weeks of compensation.

Appellant may request an 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.

CONCLUSION

The Board finds that appellant has no more than 13 percent permanent impairment of the right lower extremity.

[14] *Id.* at 529.

[15] *See supra* note 9. The Board has also noted a reluctance to find a date of maximum medical improvement that is retroactive to the award, as retroactive awards often result in payment of less compensation benefits. *See J.C.*, 58 ECAB 258 (2007).

[16] *See* 5 U.S.C. § 8107(c)(2); 20 C.F.R. § 10.404.

[17] *Carl R. Benavidez*, 56 ECAB 596 (2005).

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 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