United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 12-612**
	)	**Issued: November 2, 2012**
U.S. POSTAL SERVICE, INSPECTION SERVICE, Washington, DC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 19, 2012 appellant filed a timely appeal from a December 8, 2011 decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant sustained more than a two percent permanent impairment of the left leg, for which he received a schedule award.

On appeal appellant contends that the evaluation performed by the second opinion specialist, was insufficient to constitute the weight of the medical evidence.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the December 8, 2011 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

OWCP accepted that on October 4, 2005 appellant, then a 50-year-old postal police officer, sustained a left medial collateral ligament strain/sprain, left thigh sprain/strain, left knee sprain/strain and tear of the medial meniscus of the left knee as a result of being kicked by another officer during defensive training in the performance of duty. Appellant filed a claim for a schedule award.

In an October 31, 2009 report, an OWCP medical adviser determined that appellant had a two percent impairment of the left leg under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*).

By decision dated March 2, 2010, OWCP granted appellant a schedule award for two percent impairment of the left leg. The award ran for 5.76 weeks for the period July 14 to August 23, 2009.

On March 5, 2010 appellant, through his attorney, requested a hearing before an OWCP hearing representative, which was held on June 16, 2010.

By decision dated July 30, 2010, an OWCP hearing representative set aside the March 2, 2010 decision and remanded the case for a second opinion examination.

OWCP referred appellant, together with a statement of accepted facts and medical records, to Dr. Robert A. Smith, a Board-certified orthopedic surgeon. In an August 26, 2010 report, Dr. Smith opined that appellant had two percent impairment of the left leg based on the sixth edition of the A.M.A., *Guides*. Upon physical examination, he found no deformity or effusion of the knee and satisfactory range of motion of the joints with full extension. Patellofemoral crepitation was noted with some mild pain and an equivocal McMurray's sign. There was mild atrophy of 1 centimeter in the left compared to the right side with motor strength and quadriceps and hamstrings of 4/5 and no instability in the cruciate or collateral ligaments. The patella tracked normally without subluxation. Dr. Smith diagnosed meniscal injury and found that appellant was at maximum medical improvement as of October 3, 2006, one year from the time of injury. He assigned a class 1 impairment for a meniscal injury under Regional Grid, Table 16-3[3] on page 509 of the A.M.A., *Guides* with the default grade C equal to two percent lower extremity impairment. Utilizing Table 16-6,[4] Dr. Smith assigned a grade modifier 1 for Functional History (GMFH) for knee adjustment. For the Physical Examination adjustment (GMPE), he assigned a grade modifier 1 under Table 16-7[5] on page 517 because of

[3] Table 16-3, pages 509-511 of the sixth edition of the A.M.A., *Guides* is entitled Knee Regional Grid -- Lower Extremity Impairments.

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

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

clinical signs of atrophy. For the Clinical Studies (GMCS) adjustment under Table 16-8[6] on page 519, Dr. Smith assigned a grade modifier 1 for mild degenerative pathology as well as a medical meniscal tear. Using the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), outlined on page 521, Dr. Smith found that (1-1) + (1-1) + (1-1) resulted in a net grade modifier of 0, resulting in an impairment class 1, grade C, equaling a two percent permanent impairment of the left lower extremity.

On September 16, 2010 Dr. Christopher R. Brigham, a Board-certified orthopedic surgeon and an OWCP medical adviser, reviewed the medical record. He determined that the date of maximum medical improvement was October 3, 2006 as determined by Dr. Smith. Appellant's condition had stabilized at that time and was not expected to change significantly from that day forward. Dr. Brigham concurred with Dr. Smith's impairment rating.

By decision dated September 20, 2010, OWCP denied appellant's request for an increased schedule award.

On September 24, 2010 appellant, through his attorney, requested a hearing before an OWCP hearing representative, which was held on January 25, 2011. Appellant submitted a July 14, 2009 report by Dr. George K. Avetian, an osteopath Board-certified in family medicine, who assigned a class 2 impairment as moderately impaired and opined that he had a 14 to 25 percent lower extremity impairment under the sixth edition of the A.M.A., *Guides*.

By decision dated April 26, 2011, an OWCP hearing representative set aside the September 20, 2010 decision and remanded the case for further development. She directed OWCP to request that Dr. Smith further explain his impairment rating, noting that Dr. Avetian did not explain why he placed appellant in class 2.

In a report dated May 24, 2011, Dr. Smith explained that in using the sixth edition of the A.M.A., *Guides*, the pathological condition to be rated in appellant's case was a tear of the posterior medial meniscus of the left knee. He stated that the first tier for a partial (medial or lateral) meniscectomy, a meniscal tear or meniscal repair and that the default rating was two percent. Appellant's MRI scan showed that he had a tear of the posterior horn of the medial meniscus. The study revealed no evidence of a lateral meniscal tear or any post-traumatic damage to the articular surface of the knee. Appellant never required any surgery for this condition. As the pathological condition being rated involved a tear of only one part of the medial meniscus, any appropriate surgical procedure would involve a partial medial meniscectomy. Dr. Smith determined that his condition fell within the first tier of rating numbers under class 1, mild problem for meniscal injury. The modifying factors for functional history, clinical examination findings and imaging study findings were all one. Thus, Dr. Smith explained, there was no need to shift from the default rating of two percent left lower extremity impairment.

By decision dated June 9, 2011, OWCP denied appellant's request for an increased schedule award relying on Dr. Smith's May 24, 2011 report.

[6] Table 16-8, page 519 of the sixth edition of the A.M.A., *Guides* is entitled Clinical Studies Adjustment -- Lower Extremities.

On June 11, 2011 appellant, through his attorney, requested a hearing before an OWCP hearing representative, which was held on September 22, 2011.

By decision dated December 8, 2011, an OWCP hearing representative denied the schedule award claim finding that appellant did not establish that he sustained greater than two percent impairment to the left leg.

LEGAL PRECEDENT

The schedule award provisions of FECA[7] 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 matter 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.[8] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[9]

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).[10] 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.[11] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[12]

ANALYSIS

OWCP accepted that appellant sustained a left medial collateral ligament strain/sprain, left thigh sprain/strain, left knee sprain/strain and a tear of the medial meniscus of the left knee on October 4, 2005. He claimed a schedule award on November 3, 2009 which OWCP granted for two percent permanent impairment of the left lower extremity by decision dated March 2, 2010. Appellant disagreed with the impairment rating and requested an oral hearing.

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[7] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

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

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[10] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The ICF: A Contemporary Model of Disablement.

[11] A.M.A., *Guides* (6th ed. 2009), pp. 494-531.

[12] *See R.V.*, Docket No. 10-1827 (issued April 1, 2011).

In order to determine the extent and degree of any permanent impairment, OWCP referred appellant to Dr. Smith, who examined appellant on August 26, 2010 and concluded that appellant had a two percent impairment of the left lower extremity. In accordance with its procedures, OWCP properly referred the evidence of record to Dr. Brigham, a medical adviser, who reviewed the clinical findings of Dr. Smith and concurred with the impairment rating. Dr. Smith assigned appellant to class 1 for a meniscal injury under Regional Grid, Table 16-3 of the A.M.A., *Guides* with the default grade C equal to two percent lower extremity impairment. Utilizing Table 16-6, Dr. Smith assigned a grade modifier 1 for functional history for knee adjustment. For the physical examination adjustment, he assigned a grade modifier 1 under Table 16-7 due to clinical signs of atrophy. For the clinical studies adjustment under Table 16-8, Dr. Smith assigned a grade modifier 1 for mild degenerative pathology as well as a medical meniscal tear. Using the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), Dr. Smith found that (1-1) + (1-1) + (1-1) resulted in a net grade modifier of 0, resulting in an impairment class 1, grade C, equaling a two percent permanent impairment of the left lower extremity. In a supplemental report dated May 24, 2011, Dr. Smith provided a detailed explanation of how he determined appellant's impairment rating. He indicated that appellant's MRI scan revealed no evidence of a lateral meniscal tear or any post-traumatic damage to the articular surface of the knee and he never required any surgery of this condition. As the pathological condition being rated involved a tear of only one part of the medial meniscus, an appropriate surgical procedure would involve a partial medial meniscectomy only in appellant's case. Therefore, Dr. Smith determined that his condition fell within the first tier of rating numbers under class 1, mild problem for meniscal injury. The modifying factors for functional history, clinical examination findings and imaging study findings were all one. Thus, Dr. Smith explained, there was no need to shift from the default rating of two percent left lower extremity impairment.

There is no medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides* to establish a greater percentage of permanent impairment. In her April 26, 2011 decision, an OWCP hearing representative found that Dr. Avetian did not adequately explain why he assigned a class 2 impairment and rated a 14 to 25 percent lower extremity impairment. OWCP properly relied on Dr. Smith's assessment of a two percent impairment of the left lower extremity.[13]

On appeal appellant contends that the evaluation performed by Dr. Smith was insufficient to constitute the weight of the medial evidence. The Board finds that OWCP properly referred appellant to Dr. Smith for a second opinion evaluation. Dr. Smith reviewed the evidence of record, conducted an objective physical examination and applied the appropriate edition and tables of the A.M.A., *Guides*. He also provided a supplemental report explaining his application of the A.M.A., *Guides.* The Board finds that the evaluation performed by Dr. Smith as a second opinion was proper and constitutes the weight of medical opinion.

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.

[13] *See M.T.*, Docket No. 11-1244 (issued January 3, 2012).

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 a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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