United States Department of Labor
Employees' Compensation Appeals Board

T.W., Appellant	)	
and	)	**Docket No. 12-1191**
	)	**Issued: November 20, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Bethesda, MD, 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 May 7, 2012 appellant filed a timely appeal from the March 5, 2012 schedule award decision of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUE

The issue is whether appellant has more than an eight percent permanent impairment of his right leg.

FACTUAL HISTORY

This is the third appeal before the Board. Appellant, then a 39-year-old letter carrier, injured his right knee on August 17, 1995 when he tripped over a hole on a front lawn. He filed a claim for benefits on August 18, 1995, which OWCP accepted for right knee sprain. On

[1] 5 U.S.C. § 8101 *et seq.*

February 15, 1997 Dr. Irvin A. Guterman, Board-certified in orthopedic surgery, performed a partial lateral meniscectomy, right knee arthroscopy and partial resection of hypertrophic synovium. The procedure was authorized by OWCP.

By decision dated December 3, 2002, OWCP granted appellant a schedule award for a two percent permanent impairment of the right leg. In a decision dated September 29, 2003,[2] the Board set aside the December 3, 2002 decision and remanded the case for further development. The Board noted that OWCP did not explain why it selected a diagnosis-based leg impairment rating of two percent rather than an eight percent anatomic rating for thigh atrophy. By decision dated March 10, 2004, OWCP issued a schedule award for an additional six percent permanent impairment to the right leg.

Appellant sought an additional schedule award. By decision dated May 14, 2008, OWCP denied his request for an additional schedule award. In a decision dated December 5, 2008,[3] the Board affirmed the May 14, 2008 decision. The facts of this case as set forth in the Board's prior decisions are incorporated by reference.

In an October 11, 2010 report, Dr. Guterman advised that appellant had continued complaints of right knee pain, which began after he had been on his knee for approximately three hours. He related that there were periodic episodes of exacerbation depending on his activities. On examination Dr. Guterman measured a range of motion of zero to 115 degrees in the right knee, with thigh circumference of 58 centimeters (cm) on the right and 60 cm on the left, 10 cm above the patella. He advised that appellant had residual symptoms, quadriceps weakness and mild degenerative joint disease, right knee, status post lateral meniscectomy.

In a November 3, 2010 report, Dr. Guterman rated an 11 percent impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) sixth edition. He based this rating on the following factors:

> "Using [T]able 16-3, three percent impairment is awarded for the partial lateral meniscectomy. Using the following factors of functional history grade 2 ([T]able 16-6), physical examination ([T]able 16-7), range of motion grade modifier 1 and muscle atrophy grade modifier 2, an additional eight impairment of the lower extremity is determined. Thus, 11 percent impairment of the lower extremity is obtained."

In a report dated February 27, 2012, Dr. Christopher R. Brigham, Board-certified in occupational medicine and an OWCP medical adviser, reviewed Dr. Guterman's reports. He found that appellant did not have any additional impairment of the right leg pursuant to the sixth edition of the A.M.A., *Guides*. Dr. Brigham stated:

> "In Table 16-3, Knee Regional Grid, Lower Extremity Impairments section on meniscus injury, for the diagnosis 'Partial (medial or lateral) meniscectomy,

[2] Docket No. 03-1006 (issued September 29, 2003).

[3] Docket No. 08-1651 (issued December 5, 2008).

meniscal tear or meniscal repair' there is a [c]lass 1 rating with a default score of [two] percent lower extremity impairment. Dr. Guterman selects a [three] percent lower extremity impairment for the diagnosis, which is not consistent with the default value of the [c]lass [1] rating.

"Dr. Guterman selects the grade modifiers for the functional history, physical examination and the clinical studies and provides an additional [eight] percent lower extremity impairment. He does not follow the method value in the A.M.A., *Guides* for applying the grade modifiers to the default value of the impairment rating.

"Dr. Guterman reports in his October 11, 2011 report, '[s]ymptomatically, the patient continues to complain of pain about the knee that begins after he has been on the knee for approximately three hours.' The medical reports reviewed are absent reported antalgic gait or corrective footwear. Therefore, in [s]ection 16.3a, Adjustment Grid -- Functional History … and Table 16-6, Functional History -- Lower Extremities …, [appellant] is assigned a [g]rade [m]odifier zero; the functional history is consistent with 'no problem.'

"In [s]ection 16.3b, Adjustment Grid -- Physical Examination … and Table 16-7, Physical Examination Adjustment -- Lower Extremities …, Dr. Guterman reports that there is a [g]rade [m]odifier 2 for the reported atrophy of two cm difference in circumference of the right thigh. The medical reports reviewed report that there is no difference in calf circumference. Dr. Guterman reports in the October 11, 2010 report that there is '[r]ange of motion, 0 [to] 115 degrees.' The finding of the thigh circumference would not be an expected finding for the diagnosis of the right knee. The reported range of motion measurements support no range of motion deficit of the right knee. I provide a [g]rade 1 [m]odifier for 'minimal palpatory findings.'

"In [s]ection 16.3c, Adjustment Grid -- Clinical Studies … and Table 16-8, Clinical Studies Adjustment -- Lower Extremities …, [appellant] is not assigned a [g]rade [m]odifier as the [c]linical [s]tudies were used to confirm the diagnosis.

"In summary, the adjustments are: [f]unctional [h]istory [g]rade [m]odifier 0, [p]hysical [e]xamination 1 and [c]linical [s]tudies [not applicable]. Net adjustment compared to [d]iagnosis [c]lass is minus 1, [g]rade B, two [percent] lower extremity impairment in regards to the right knee."[4]

By decision dated March 5, 2012, OWCP found that appellant had no additional impairment of the right leg greater than the eight percent previously awarded.

[4] A.M.A., *Guides* at 510.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing regulations[6] 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. 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.[7] 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.[8]

ANALYSIS

In the instant case, OWCP accepted the conditions of right knee sprain and partial meniscectomy and granted appellant schedule awards totaling eight percent impairment of the right leg. The Board notes that there is no specific provision for rating impairment based on strains or sprains in the A.M.A., *Guides*. This does not warrant the conclusion that such an award is precluded. The Board routinely reviews schedule award claims for which the accepted condition is sprain or strain and has recognized that a sprain/strain may result in a permanent impairment.[9] The instant record is not sufficient to establish that appellant has an impairment caused by his accepted right knee strain, other than as an adjustment factor for the diagnosis-based impairment rating based upon his partial meniscectomy.

The Board notes that the A.M.A., *Guides* directs examiners to rate diagnosis-based impairments for the lower extremities pursuant to Chapter 16, which states at page 497, section 16.2a that impairments are defined by class and grade.[10] In accordance with this section the examiner is instructed to utilize the net adjustment formula outlined at pages 521-22 of the A.M.A., *Guides*,[11] to obtain the proper impairment rating. Dr. Brigham, OWCP's medical adviser determined that Dr. Guterman's November 3, 2010 report, which found that appellant had an 11 percent impairment of the right lower extremity, was not rendered in accordance with the applicable protocols of the A.M.A., *Guides*. He noted that the diagnosis of partial lateral meniscectomy yielded a class 1 rating with a default rating of two percent lower extremity

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404. Effective May 1, 2009, FECA began using the A.M.A., *Guides* (6th ed. 2009).

[7] *Id.*

[8] *Veronica Williams*, 56 ECAB 367, 370 (2005).

[9] *C.H.*, Docket No. 08-2246 (issued May 15, 2009).

[10] A.M.A., *Guides* 497.

[11] *Id*. at 521-22.

impairment; Dr. Guterman, however, rated a three percent lower extremity impairment for the diagnosis, which was not consistent with the default value of the class 1 rating.

In addition, Dr. Brigham found that Dr. Guterman did not use the proper method for applying grade modifiers for the functional history, physical examination and clinical studies adjustment values to the default value of the impairment rating; nor did he accurately rely on examination findings to render his impairment ratings. He relied on the adjustment grid at section 16.3a, Table 16-6,[12] to assign appellant a functional history grade modifier of zero, consistent with "no problem." For physical examination, Dr. Brigham relied on the adjustment grid at section 16.3b, Table 16-7,[13] to assign appellant a physical examination grade modifier of 1 for the reported atrophy of two cm difference in the circumference of the right thigh; he stated that measurements taken in Dr. Guterman's October 11, 2010 report showed a negligible difference in calf circumference and no range of motion deficit of the right knee. He assigned grade 1 modifier for minimal palpatory findings. With regard to clinical studies, Dr. Brigham relied on the adjustment grid at section 16.3c, Table 16-8,[14] to find that a grade modifier for clinical studies were not applicable, as there were no tests utilized to confirm the diagnosis. He therefore concluded that the net adjustment compared to diagnosis class was minus 1, grade B, for a two percent lower extremity impairment for the right knee.

The Board finds that OWCP's medical adviser properly determined that appellant did not have an impairment of the right leg greater than that already awarded, as he calculated this rating based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. Dr. Guterman found that appellant had an 11 percent right lower extremity impairment. His reports are of diminished probative weight, however, as he did not utilize the proper methods to correlate this rating to the applicable protocols of the sixth edition of the A.M.A., *Guides*.[15] OWCP properly found that the opinion of its medical adviser, Dr. Brigham, constituted sufficient medical rationale to support the March 5, 2012 schedule award decision.

Appellant has submitted no other medical evidence indicating that he has an impairment greater than eight percent to his right leg. The Board will affirm OWCP's March 5, 2012 decision denying an additional schedule award for the right lower extremity.

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.

[12] *Id*. at 516.

[13] *Id*. at 517.

[14] *Id*. at 519.

[15] The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005). The Board notes that Dr. Beebe provided differing impairment ratings in several reports, which further diminished the probative weight of his opinion.

CONCLUSION

The Board finds that appellant has not established that he has more than an eight percent impairment to his right leg.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 20, 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