U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ABEL GARCIA, JR. and U.S. POSTAL SERVICE,
EAST BAY, Provo, UT

Docket No. 99-1596; Submitted on the Record;
Issued September 7, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained more than a two percent permanent impairment of the lower right extremity for which he received a schedule award.

On January 16, 1998 appellant, then a 53-year-old mailhandler, filed a traumatic injury claim (Form CA-1) alleging that, on December 3, 1997, he sustained an injury in the form of a right meniscus tear when he pulled a mail container.

By decision dated February 4, 1998, the Office of Workers' Compensation Programs accepted appellant's claim for a right medial meniscus tear and authorized right knee arthroscopy.

On July 1, 1998 appellant filed a claim for a schedule award.

In support of his claim, appellant submitted a report, dated June 19, 1998, from Dr. Alan M. Banks, his attending surgeon. In his report, Dr. Banks stated:

> "[A]t present [appellant] shows return of [full range of motion] but continues to have persistent pain on the medial side of the knee with prolonged weight bearing and vigorous activities that are consistent with the injury to the articular surface. I think he has reached maximum impairment and according to the A[merican] M[edical] A[ssociation], *Guides to the Evaluation of Permanent Impairment*, fourth edition, Table 64, his condition would equal a 10 percent lower extremity impairment, 10 percent whole person impairment secondary to the injury both to the meniscus and to the articular surface."

The Office referred appellant's case record to Dr. W. Grayburn Davis, the district medical adviser. In a report dated September 28, 1998, Dr. Davis stated that appellant reached maximum medical improvement on June 19, 1998. He also stated, "per the A.M.A., *Guides*, the

only ratable impairment mentioned in Dr. Banks' report is the partial meniscectomy which is: PPI two percent leg."

By decision dated September 30, 1998, the Office granted appellant a schedule award for a two percent permanent impairment of the right lower extremity.

By letter dated December 29, 1998, appellant, through his attorney, requested reconsideration of his claim. Appellant submitted a report from Dr. Banks dated December 11, 1998, who stated a 10 percent lower extremity impairment was equal to a 4 percent whole by impairment. He stated, "At the time of arthroscopy, I found a significant area of cartilage damage that was Grade 4 down to bone. This actually will become more of a problem in the future than the meniscal tear and in my opinion should be graded similarly to a nondisplaced plateau or condyle fracture which is equal to a five percent lower extremity impairment, two percent whole person." He opined that appellant "could be a candidate for a cartilage graft in the future."

Appellant was referred together with a statement of accepted facts and questions for resolution to Dr. Richard G. Bromley, a Board-certified orthopedic surgeon, for a second opinion examination. In his report dated January 29, 1999, Dr. Bromley described the history of appellant's injury, past medical history, allergies, medications, family and social histories. He noted that Dr. Banks' 10 percent impairment rating was based on appellant's partial meniscectomy and chondral defect in the femoral condyle. Dr. Bromley found a "full thickness defect that looks to be about 2.0 [centimeters] in diameter involving the medial femoral condyle with exposed bone in the bottom of the crater." He stated that appellant's physical examination revealed right knee range of motion to 130 degrees without obstruction in the joint. Dr. Bromley also stated that there was no evidence of varus or valgus instability, drawer and Lachman's tests were negative, and there was no fluid detected in the right knee. He noted that appellant complained of soreness throughout the knee, particularly in the medial joint. Dr. Bromley diagnosed a meniscal tear of the right knee that was arthroscopically partially debrided and stabilized. He also diagnosed a "one to two [centimeter] Grade IV or full thickness chondral defect in the medial femoral condyle." He further diagnosed a "reportedly degenerative disc disease at the L5 in the lumbar spine for which he received a medical retirement from the military." Dr. Bromley stated, "[i]t is my opinion that [appellant] does not have any impairment of the right lower extremity due to loss of flexion." He noted that appellant "essentially has the same range of motion [in his right knee] that he has in his left knee." Dr. Bromley also noted:

> "[A]ccording to the [A.M.A., *Guides*], a partial meniscectomy constitutes a two percent impairment of the right lower extremity, but [appellant] has an antalgic limp and has pain in the joint and has presented to me evidence of a significant chondral lesion in the medial femoral condyle. This appeared to be a chronic lesion and I cannot explain that this degree of defect in the medial femoral condyle from the mechanism of injury that he describes at his work situation would have produced such a large defect only from [the December 3, 1997 employment incident] without some rather profound locking of the knee which he says that he did not have. However, I am unable to obtain from him, nor do I have any medical documentation of a prior injury. [Appellant] is contending that

> his work at the [employing establishment] is responsible for the changes in the right knee and I have no other basis on which to attribute the patient's knee findings and would assign an additional eight percent of impairment to the right lower extremity due to pain and antalgic gait from the full thickness loss of weightbearing chondral cartilage in the center of the medial femoral condyle in the right knee. This represents a 10 percent impairment of the right lower extremity."

Dr. Bromley completed a work capacity evaluation form dated February 2, 1999, noting appellant's activity limitations.

On February 18, 1999 Dr. Davis reviewed Dr. Bromley's January 29, 1999 report. In his report, he found that appellant's limp and pain were "not ratable if [the A.M.A., *Guides*] is followed strictly as FECA [regulations] mandate." Accordingly, he found a two percent right lower extremity impairment. Dr. Davis also found that appellant reached maximum medical improvement on January 29, 1999.

By decision dated February 19, 1999, the Office denied modification of the September 30, 1998 decision. The Office found that appellant had a two percent loss of use of the right lower extremity.

By letter dated March 18, 1999, appellant, through his attorney, requested reconsideration of his claim. In support of his request, he argued that, according to the Federal (FECA) Procedure Manual, pain is a ratable impairment. He further argued that appellant's pain should be rated an 8 percent impairment making his total impairment rating 10 percent. Appellant submitted a copy of the procedure manual schedule award provisions, which stated that pain cannot be easily measured using the A.M.A., *Guides* and should be "considered along with the impairment measurable by the A.M.A., *Guides* and correlated as closely as possible with the factors set forth there." The procedure manual further stated, "[w]henever pain … is present due to nerve injury or nerve dysfunction (*e.g.*, leg impairment due to a spinal disc injury), the evaluating physician should include these factors in arriving at a percentage of impairment."

By memorandum dated March 1, 1999, the Office referred appellant's reconsideration request to Dr. Davis. In his statement dated March 5, 1999, Dr. Davis again found that appellant had a two percent impairment rating. He stated, "[appellant's representative] stretches the point in his request for reconsideration. Of equal or more importance is the section on 'pain' [in the A.M.A., *Guides*] which we have used as our guide in about 10,000 prior scheduled award determinations."

By decision dated April 6, 1999, the Office denied modification of its prior decisions.

The Board finds that appellant sustained no more than a two percent permanent impairment of the right lower extremity for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[3]

When the effect of impairment is pain, a physician, under the A.M.A., *Guides*, must identify the area of involvement and identify the nerve or nerves that innervate the area of involvement. The physician then finds that value for maximum loss of function of the nerve or nerves that innervate the area of involvement. The physician then finds the value for maximum loss of function of the nerve or nerves due to pain or loss of sensation using the appropriate table. A physician next grades the degree of decreased sensation or pain according to a six-level grading scheme. Finally, a physician multiplies the value of the nerve, gleaned from the appropriate table, by the degree of decreased sensation or pain to reach the degree of impairment.[4]

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 injury.[5] Thus, an employee is not eligible to receive a schedule award until he has reached maximum medical improvement. Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.[6] The question of when maximum medical improvement has been reached is a factual one depending upon the medical findings in the record.[7]

In this case, the weight of the medical evidence shows that appellant has a two percent permanent impairment of his right lower extremity for which he received a schedule award. In his report dated June 19, 1998, Dr. Banks found that appellant had a 10 percent right lower extremity impairment relating to his torn meniscus and related pain and gait. However, Dr. Banks did not fully utilize the A.M.A., *Guides* as he did not follow its provisions for rating pain as he did not refer to any tables utilized for his determination of an eight percent

[1] 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.404.

[3] *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

[4] *James R. Bradford*, 48 ECAB 320 (1997).

[5] *Eugenia L. Smith*, 41 ECAB 409, 413 (1990); *Yolanda Librera*, 37 ECAB 388 (1986).

[6] *Joseph R. Waples*, 44 ECAB 936, 940 (1993); *Marie J. Born*, 27 ECAB 623, 629 (1976).

[7] *Id.*

impairment rating for pain. Dr. Davis, the district medical adviser, determined that appellant's ratable impairment was only two percent as appellant's meniscectomy was his only ratable impairment. The Office referred appellant's file to Dr. Bromley for a second opinion examination. In his report dated January 29, 1999, Dr. Bromley found that appellant sustained a 10 percent lower extremity impairment by adding a 2 percent impairment relating to his partial meniscectomy and an 8 percent impairment relating to his "pain and antalgic gait from the full thickness loss of weightbearing chondral cartilage in the center of the medial femoral condyle in the right knee." However, he did not refer to the A.M.A., *Guides* in rating appellant's pain. Appellant's record was again referred to Dr. Davis who stated that appellant had a two percent impairment based on the A.M.A., *Guides* for a partial meniscectomy. In response to appellant's March 18, 1999 reconsideration request, the Office once again referred appellant's file to Dr. Davis who again found that appellant had a two percent impairment of the right lower extremity. In his report, Dr. Davis rejected appellant's argument that under the Office's procedure manual his impairment rating should be 10 percent, including an 8 percent impairment for pain, on the grounds that the A.M.A., *Guides* was the proper authority to determine impairment due to pain.

Although the A.M.A., *Guides* set forth provisions for rating pain, neither Dr. Banks or Dr. Bromley referred to right lower extremity impairment. They failed to identify the nerve or nerves that innervate the area of involvement. Dr. Davis' reports constitute the weight of the medical evidence as his two percent permanent impairment rating of the right lower extremity due to a partial meniscectomy conforms to the A.M.A., *Guides.*[8]

Under the Act, a 2 percent permanent impairment rating of the lower extremity results in a schedule award of 5.76 weeks.[9] By multiplying apellant's 2 percent permanent impairment rating by 288, the maximum number of weeks for which a schedule award may be paid for loss of use of the leg, the Office properly determined that appellant was entitled to a schedule award for 5.76 weeks. Appellant is entitled to no more under the Act. There is no discretion on the part of the Office or Board to grant additional compensation for such losses.[10]

[8] A.M.A., *Guides* at 85.

[9] 5 U.S.C. § 8107 (c)(2).

[10] *Donald Mueller*, 32 ECAB 33 (1980).

The decisions of the Office of Worker's Compensation Programs dated May 11, March 6 and February 19, 1999 and September 30, 1998 are affirmed.

Dated, Washington, D.C.
September 7, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member