U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID A. ANNICHIARICO and U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Syracuse, NY

Docket No. 00-553; Submitted on the Record;
Issued June 15, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 55 percent impairment of the left lower extremity, for which he received a schedule award.

The Board has duly reviewed the case record and concludes that appellant has no more than a 55 percent impairment of the left lower extremity.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations,[2] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[3] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[4]

On October 12, 1991 appellant, then a 40-year-old letter carrier, sustained an injury to his left knee while trying to evade an attacking dog in the performance of duty. The Office of Workers' Compensation Programs initially accepted appellant's claim for left knee sprain and

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[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.404.

[3] 5 U.S.C. § 8107(c)(19).

[4] *See James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

exacerbation of a torn left medial meniscus, and authorized arthroscopic surgery on February 25, 1992.[5] Subsequent to the surgery, appellant developed deep venous thrombophlebitis, which was accepted by the Office as precipitated by the employment injury.[6]

By decision dated January 11, 1996, the Office granted appellant a schedule award for a 30 percent permanent impairment of the left lower extremity based on the December 29, 1995 opinion of an Office medical adviser who applied the standards of the A.M.A., *Guides* to the October 12, 1995 findings of Dr. Stephen C. Robinson, a Board-certified orthopedic surgeon and appellant's treating physician.[7]

By letters dated January 24, July 16 and November 5, 1996, appellant requested reconsideration of the Office's decision, and by decisions dated May 16 and August 23, 1996, and January 15, 1997, respectively, the Office found the additional evidence submitted by appellant to be insufficient to warrant further merit review of his claim.

On April 15, 1999 appellant filed a claim for an additional schedule award and submitted medical evidence from Dr. Robinson. In a decision dated August 23, 1999, the Office granted appellant a schedule award for an additional 25 percent permanent impairment, for a total of 55 percent. The Office based its decision on the August 18, 1999 opinion of an Office medical adviser who applied the standards of the A.M.A., *Guides* to the July 26, 1999 findings of Dr. Robinson. The instant appeal follows.

In reports dated October 20, 1998 and March 18, 1999, Dr. Robinson noted that appellant now needed to wear special supportive stockings and required the use of a motorized scooter to get around. Both the stockings and the scooter were authorized by the Office. In a report dated May 6, 1999, Dr. Robinson noted that appellant was still having severe problems with ambulation and pain and swelling in his left leg. He noted that on physical examination, appellant used two crutches and ambulated very slowly with a great deal of pain, with a very wide-based, short gait. Examination revealed rather dramatic "genu varum" of the left knee and intense swelling of the left leg. Flexion of the left knee was from 20 to 30 degrees with pain, and the knee was very tender.

Dr. Robinson diagnosed severe osteoarthritis of the left knee and postphlebitic syndrome of the left lower extremity, and concluded that from a medical standpoint, there was nothing more that could be done. He opined that because of the severe pain and difficulty ambulating, the massive swelling in the leg and appellant's overall size, appellant was totally disabled for any work.

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[5] Appellant underwent a partial left medial menisectomy, a medial femoral chondroplasty and a patellar shaving procedure.

[6] In addition, appellant has another accepted claim for permanent aggravation of osteoarthritis of the left knee, with venous insufficiency, which was doubled with this claim on July 10, 1998.

[7] In his report, Dr. Robinson noted that appellant still suffered from osteoarthritis of the left knee with postphlebitic syndrome. On physical examination, he noted that appellant was tender in the medial joint line and had flexion from 10 to 90 degrees.

By letter dated June 25, 1999, the Office asked Dr. Robinson to provide a complete report addressing whether maximum medical improvement had been reached, the recommended percentage of impairment, with references to the applicable tables in the A.M.A., *Guides*, and a description of all subjective complaints, such as pain and discomfort.

In a report dated July 26, 1999, Dr. Robinson noted that on examination, appellant's left leg remained very swollen and diffusely tender with trophic changes in the skin. He reported that appellant had flexion of the knee from 45 to 55 degrees with a 45 degree fixed flexion contracture. Noting that he had been requested to evaluate appellant for a schedule award, Dr. Robinson stated that based on appellant's ongoing severe pain, the very limited knee motion and rather massive leg swelling, appellant had an 80 percent loss of use of his left leg and remained totally disabled for work.[8]

As Dr. Robinson had not applied the standards of the A.M.A., *Guides* to his findings, as requested, the Office forwarded his July 26, 1999 report to an Office medical adviser, whom the Office claims examiner instructed to correlate Dr. Robinson's findings with the fourth edition of the A.M.A., *Guides*. In a report dated August 18, 1999, the Office medical adviser noted that pursuant to Table 41, page 78 of the A.M.A., *Guides*, knee flexion of 45 to 55 degrees equated to a 55 percent impairment or an additional 25 percent over appellant's prior impairment rating of 30 percent.

It is appellant's burden to submit sufficient evidence to establish his claim. While Dr. Robinson indicated that appellant had an 80 percent left lower extremity impairment, he did not indicate what tables and/or figures he used to reach this conclusion. There is, therefore, no medical evidence establishing that appellant has more than a 55 percent impairment, for which he received a schedule award.

[8] Dr. Robinson additionally found that appellant presented with a secondary problem of increased symptoms of pain and paresthesias in both hands, left much greater than right. The physician noted that appellant reported that the problem began about five years previously, while working, but that over the past year or so, with the increased use of crutches for walking, his hand symptoms had gotten much worse. After examining appellant and noting markedly positive Tinel's and Phalen's test results, Dr. Robinson diagnosed bilateral carpal tunnel syndrome, left greater than right. Dr. Robinson concluded that this was a work-related problem, as appellant reported it began while he was working, and had been aggravated by walking on crutches, which was necessitated by his knee problems. On appeal, appellant asserts that the Office erred in failing to address his claim for bilateral carpal tunnel. While it is well established that a claim for compensation need not be filed on any particular form, and may be made by filing any paper containing words which reasonably may be construed or accepted as a claim, there is no indication in the record before the Board that appellant ever notified the Office, either formally or informally, that he was seeking compensation for carpal tunnel syndrome which he developed as a consequence of his accepted employment-related injuries; *see William F. Dotson*, 47 ECAB 253 (1995); *Barbara A. Weber*, 47 ECAB 163 (1995).

The decision of the Office of Workers' Compensation Programs dated August 23, 1999 is hereby affirmed.

Dated, Washington, DC
June 15, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member