U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE CRAWFORD and DEPARTMENT OF THE AIR FORCE, WARNER ROBINS AIR LOGISTICS CENTER, ROBINS AIR FORCE BASE, GA

Docket No. 03-1529; Submitted on the Record;
Issued October 28, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has greater than a 30 percent permanent impairment of his right lower extremity, for which he has received a schedule award.

The Office of Workers' Compensation Programs accepted that, on June 17, 1991, appellant, then a 45-year-old equipment cleaner, sustained internal derangement of his right knee when he slipped coming down from a stand.

Appellant underwent arthroscopic surgery on his right knee on October 4, 1991 for debridement of the posterior horn of the medial meniscus. In an October 21, 1991 report, appellant's treating physician Dr. C. Emory Johnson, Jr., a Board-certified orthopedic surgeon, indicated that appellant had healed well from his surgery and had a 15 percent disability due to his right knee. He noted appellant's activity restrictions and indicated that, due to the amount of changes following the chondral fracture, appellant would probably further wear out his knee.

On January 17, 1992 an Office medical adviser noted appellant's date of maximum medical improvement as October 21, 1991 and opined that appellant had a 15 percent permanent impairment of his right lower extremity, based upon a posterior horn medial meniscus tear, chondromalacia, arthritis and a flap tear of the medial femoral condyle.

On January 29, 1992 the Office granted appellant a schedule award for a 15 percent permanent impairment of his right lower extremity for the period December 12, 1991 to October 9, 1992 for a total of 43.20 weeks of compensation.

Dr. Johnson continued to treat appellant and on March 23, 1992 he noted that appellant's knee continued with puffiness and a small effusion with crepitation.

On January 21, 1994 Dr. Johnson noted that appellant had continued pain in his right knee and crepitation on flexion and extension. He opined that this was a permanent disability with appellant's knee due to arthritis and the internal derangement.

On April 16, 1996 appellant filed a claim alleging that he sustained a recurrence of disability commencing April 24, 1996 and noted that he still had a right knee problem and walked with a limp. On April 24, 1996 Dr. Johnson noted that appellant had increasing pain in his right knee and that radiologically he did have loss of cartilage space medially and a possible loose body. The Office accepted that appellant sustained a recurrence of disability.

On October 25, 1999 Dr. Johnson noted that appellant's right knee had become more painful to the point where he was now requesting an arthroplasty or a total knee procedure. He noted that "with the weight bearing there is even further shift with a complete loss of joint space medially, bone on bone and obvious changes in both the lateral compartment and patella femoral." Dr. Johnson analyzed that the opposite knee was fairly destroyed from arthritis too but was not as severe. A total knee replacement was approved as appellant had shown progressive changes attendant with pain over the years since the date of injury.

By letter dated September 4, 2002, the Office requested that Dr. Johnson provide an updated evaluation of the extent of appellant's permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.).

On October 3, 2002 Dr. Johnson partially completed a form report indicating that the date of maximum medical improvement was unknown, that appellant had 110 degrees of retained active flexion and 10 degrees of retained extension, that no anklyosis was noted, that a prosthesis was indicated for knee stability and that appellant had a 40 percent permanent impairment of his right lower extremity.

In an occupational medicine report for a recommended impairment rating dated November 26, 2002, Dr. Johnson reviewed appellant's clinical findings of periodic arthritic flare-ups in both knees dating from February 14, 1994, increased weight gain and a lot of edema in the legs and a complete loss of obvious changes in both the lateral compartment and patella femoral, right greater than left. He noted that appellant's left knee was fairly destroyed from arthritis, but not as severe as the right and that an August 3, 2002 office note indicated no cartilage space on the right and only a millimeter or two on the left. A probable 40 percent disability to the lower extremity was noted. Dr. Johnson reviewed the occupational medicine findings for appellant's knee range of motion, his strength, his gait and his discomfort, which was 9 on a scale of 1 to 10. Right knee flexion was noted at 105 degrees, left knee flexion was noted at 110 degrees. Right knee extension was noted at -- 15 degrees and left knee extension was noted at -- 5 degrees. Standing varus deformity was noted at 11 degrees on the right and 10 degrees on the left. Muscle strength demonstrated 4 out of 5 for the bilateral flexors and 4+ out of 5 for the bilateral extensors. Gait was noted to be antalgic. Impairment of the right knee with no reported cartilage space was rated at 50 percent of the lower extremity or 20 percent of the whole person, referring to Table 17-31, page 544 and impairment of the left knee with no more than two millimeters of cartilage space was rated at 20 percent of the lower extremity or 8 percent of the whole person, referring to Table 17-31, page 544. Therefore, appellant was rated with a 26 percent whole person impairment, using the Combined Values Chart on page 604. This rating was noted as being "based on section 17.2h of the A.M.A., *Guides*, page 544, which was felt to be the most objective and valid method for assigning impairment when compared to physical findings, such as range of motion or crepitation."

On November 18, 2002 the Office medical adviser, Dr. Harry L. Collins, Jr., a Board-certified orthopedic surgeon, reviewed appellant's record and noted:

> "Clmt's T.P., CES (signature illegible) alleges clmt. to have 40 percent permanent impairment due to range of motion of 10 degrees to 110 degrees. Per the A[.]M[.]A[.,] *Guides* Fifth Edition 110 degrees flexion is not a permanent impairment. Ten degrees flexion contracture is a 20 percent permanent impairment of the right lower extremity. Permanent impairment of the knee for joint space narrowing requires roentgenographic evaluation of the knee per [s]ection 17.2h, [a]rthritis, page 544 of the A[.]M[.]A[.,] *Guides*, Fifth Edition."

However, on December 20, 2002 Dr. Collins reviewed the November 26, 2002 report and findings on appellant and opined "Per Table 17-10, loss of ROM of the knee flexion of 105 degrees equals 10 percent permanent impairment and loss of 15 degrees extension is 20 percent for a total of 30 percent permanent impairment of the right lower extremity. Table 17-2 precludes including weakness with the ROM impairment." He noted the date of maximum medical improvement as November 26, 2002.

On April 4, 2003 Dr. Johnson revised his earlier October 3, 2002 impairment rating for appellant, which was 40 percent of the right lower extremity and opined that appellant now had a 50 percent permanent impairment of his right lower extremity based on the November 26, 2002 findings. He noted that appellant's retained extension was -- 10 degrees instead of -- 15 degrees as found on the occupational medicine examination, but this did not change his overall opinion of appellant's total right lower extremity impairment.

On May 14, 2003 the Office granted appellant a schedule award for an additional 15 percent permanent impairment of his right lower extremity, for a total right lower extremity impairment of 30 percent. The period of the award was from November 26, 2002 to September 24, 2003 for a total of 43.20 weeks of compensation.

The Board finds that this case is not in posture for decision.

The schedule award provisions 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 scheduled members or functions of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[3] 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 Fifth Edition

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] 5 U.S.C. § 8107(c)(19).

of the A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[4]

In this case, where appellant's major ongoing diagnoses included arthritis and related internal derangement of the right knee, Dr. Johnson utilized the A.M.A., *Guides,* Chapter 17.2h on arthritis and determined that, based upon appellant's radiologically determined right knee cartilage interval of 0 millimeters as noted in Table 17-31, he had a 50 percent lower extremity impairment for his total loss of cartilage in the right knee.

The Board notes that the A.M.A., *Guides* state:[5]

> "Roentgenographic grading systems for inflammatory and degenerative arthritis are well established and widely used for treatment decisions and scientific investigation. For most individuals, roentgenographic grading is a more objective and valid method for assigning impairment estimates than physical findings, such as range of motion or joint crepitation. While there are some individuals with arthritis for whom loss of motion is the principal impairment, most people are impaired more by pain and sometimes weakness, but they still can maintain functional ranges of motion, at least in the early stages of the process. Range-of-motion techniques are therefore[,] of limited value for estimating impairment secondary to arthritis in many individuals."

The only exception to this principal was that impairments of individuals with knee flexion contractures should not be estimated using x-rays because the measurements are unreliable. In that case the knee joint must be in neutral flexion-extension position to evaluate x-rays. With the presence of a contracture, the range-of-motion method should be used.

However, the Office medical adviser chose, without explanation or rationale, to base his impairment solely on losses in range of motion, even when the A.M.A., *Guides* indicates that that is not the preferred method of evaluation. The Office medical adviser stated, in his initial appraisal of appellant's impairment, that 10 degrees of flexion contracture was a 20 percent permanent impairment of the right lower extremity. However, nowhere in the record does it explicitly state that appellant had a 10 degree right lower extremity flexion contracture. Dr. Johnson stated on April 4, 2003 that appellant had -- 10 degrees of retained extension instead of -- 15 degrees of retained extension as found by the occupational medicine evaluation and Dr. Collins stated, on December 20, 2002, that appellant had 15 degrees of lost extension which he calculated was a 20 percent impairment, in contrast to his November 18, 2002 report in which he stated that 10 degrees of flexion contracture was a 20 percent permanent impairment. As the Office medical adviser's opinion is not clear or consistent with respect to the absence or presence of a flexion contracture and, therefore, lacks any rationale for the impairment rating scheme

[4] 20 C.F.R. § 10.404 (1999). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a. (August 2002) explains that all permanent impairment awards determined on or after February 1, 2001, the effective dated of the A.M.A., *Guides* application, regardless of the date of the medical examination, should be based on the fifth edition of the A.M.A., *Guides*.

[5] A.M.A., *Guides*, (5th ed. 2001); Table 17-31, page 544.

chosen and as losses in range of motion are not the preferred method of evaluation of impairment according to the A.M.A., *Guides*, Dr. Collins' rating is of diminished probative value and cannot constitute the weight of the medical opinion evidence in this case.

Further, although Dr. Johnson presented both a lower extremity impairment rating and a whole person rating, which is not cognizable under the Act,[6] the fact that he provided a whole person rating as well as a lower extremity rating does not diminish the probative value of his lower extremity impairment determination in accordance with Table 17-31, page 544 of the A.M.A., *Guides*.

Therefore, there is a conflict in medical evidence between Dr. Johnson and the Office medical adviser regarding which is the most appropriate evaluation method to utilize in determining appellant's right knee permanent impairment.

Title 5 of the United States Code, section 8123 states that "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

Accordingly, this case will be remanded to the Office for a creation of a statement of accepted facts and formulation of specific questions to be addressed, to be followed by referral of appellant, together with the relevant case record, to an impartial medical specialist for resolution of the conflict at hand.

[6] *See Gordon G. McNeill*, 42 ECAB 140 (1990) (a schedule award is not payable under section 8107 of the Act for an impairment of the whole person).

Consequently, the decision of the Office of Workers' Compensation Programs dated May 14, 2003 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
October 28, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member