

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM J. WEINMANN and U.S. POSTAL SERVICE,
POST OFFICE, Holiday, FL

*Docket No. 02-113; Submitted on the Record;
Issued September 11, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant established a periodontal condition as causally related to his accepted employment injuries; (2) whether appellant has more than a seven percent permanent impairment to his left leg; and (3) whether the Office of Workers' Compensation Programs properly determined appellant's rate of pay.

On July 21, 1986 appellant, then a 48-year-old custodian, filed a notice of occupational disease and claim for compensation (Form CA-2). Appellant alleged that he had sustained a left knee condition causally related to the performance of his federal employment. The Office accepted a left strain and chondromalacia patella. On December 19, 1986 appellant underwent arthroscopic left knee surgery. On February 21, 2000 appellant underwent left knee surgery to repair a torn medial meniscus. The record indicates that on March 10, 2000 appellant was hospitalized due to a left leg venous thrombosis. The Office accepted a venous thrombosis as employment related.

In a report dated October 10, 2000, Dr. Dick Chapman, a dentist, stated that appellant was treated on July 24, 2000 for a severe periodontal condition, apparently as a result of a severe medical illness. Dr. Chapman opined that the periodontal condition "is due to a depressed immune system, blood dyscrasia, or [C]oumadin therapy." In a report dated December 11, 2000, Dr. Steven Lieber, a periodontist, stated that with appellant's "recent past medical history, specifically having developed blood clots post-surgery for a knee injury and having been placed on Coumadin, his medical complications obviously resulted in his inability to effectively debride his mouth of bacterial plaque." Dr. Lieber reported that, due to his medical condition, appellant was unable to perform his normal physiotherapy.

In a form report (Form CA-1303) dated December 27, 2000, Dr. Anthony Mork, an orthopedic surgeon, opined that appellant had a 14 percent impairment to both legs. Dr. Mork reported 140 degrees of flexion and 0 degrees of extension; he also noted some impairment from swelling secondary to chronic stasis. By report dated March 22, 2001, an Office medical adviser suggested that Table 62 of the fourth edition of the American Medical Association, *Guides to the*

Evaluation of Permanent Impairment (hereinafter A.M.A., *Guides*) may be appropriate, although there was no ratable impairment as presented.

By report dated January 3, 2001, Dr. Chapman stated that patient's "with a high C-protein level have a high incidence of clotting, which has been linked to the bone destroying disease in 85 percent of the cases studied." He reported that the mouth is affected in the spread of disease or pathology, especially blood dyscrasias such as anemia, leukemia and clotting disorders.

In a report dated March 16, 2001, an Office medical adviser opined that there was no relationship between the accepted conditions and the need for dental surgery. On March 30, 2001 the Office referred appellant for a second opinion evaluation on the issue of causal relationship between the periodontal condition and the employment injuries.

In a report dated April 20, 2001, Dr. Mork stated that the 14 percent impairment was for the left knee only, based on 4 percent for loss of flexion motion and 10 percent for chondromalacia. By letter dated June 15, 2001, the Office advised appellant that the fourth edition of the A.M.A., *Guides* was the appropriate standard for impairment ratings. In a report dated June 25, 2001, Dr. Michael Perry, an orthopedic surgeon and associate of Dr. Mork, opined that appellant had a 10 percent impairment for the left knee. Dr. Perry did not provide additional explanation.

In a report dated April 26, 2001, Dr. Louis Monteleone, an oral surgeon selected as a second opinion physician, provided a history and results on examination. Dr. Monteleone noted that appellant was a diabetic and a cigarette smoker. He opined that appellant's "smoking habit, accentuated by his diabetes mellitus, is the principle cause of his periodontal disease and the [C]oumadin therapy has nothing to do with his oral health impairment."

By decision dated June 15, 2001, the Office determined that appellant's periodontal condition was not causally related to the accepted employment injuries.

In a report dated July 19, 2001, an Office medical adviser opined that, based on the fourth edition of the A.M.A., *Guides*, appellant had a seven percent left leg impairment. The medical adviser referred to Table 64 and found a two percent impairment for partial meniscectomy; he also opined that appellant had five percent under Table 62 for patella femoral pain.

By decision dated September 13, 2001, the Office issued a schedule award for a seven percent impairment to the left leg. The period of the award was 20.16 weeks commencing December 27, 2000; the weekly pay rate was reported as \$476.23.

The Board finds that the case is not in posture for decision on the issue of whether the periodontal condition is employment related.

The basic rule respecting consequential injuries is that "when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows

from the injury likewise arises out of the employment.”¹ The subsequent injury “is compensable if it is the direct and natural consequence of a compensable primary injury.”²

In this case, there is conflicting medical evidence with regard to whether the periodontal condition was a consequence of the left knee surgery and subsequent venous thrombosis in March 2000. Dr. Lieber opined that being placed on the blood thinning medication, Coumadin, impaired appellant’s ability to debride his mouth of bacteria. Dr. Chapman discussed [C]oumadin therapy, blood dyscrasias and protein levels and he noted that studies had shown patients with a high C-protein level have a higher incidence of clotting and periodontitis. On the other hand, Dr. Monteleone, the second opinion oral surgeon, opined that the periodontal condition was not related to Coumadin medication, but rather to smoking and diabetes.

Section 8123(a) of the Federal Employees’ Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.³ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁴

Since there is a conflict between appellant’s attending physicians and the second opinion physician, the case will be remanded to the Office for proper resolution of the conflict on the issue of a consequential periodontal injury. After such further development as the Office deems necessary, it should issue an appropriate decision.

The Board further finds that the case is not in posture for decision with respect to the schedule award and the pay rate issues.

Section 8107 of the Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁵ Neither the Act nor the regulations specify the manner, in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶

¹ A. Larson, *The Law of Workmen’s Compensation*, § 13.00.

² *Id.* at § 13.11; *see also Merlind K. Cannon*, 46 ECAB 581, 590 (1995).

³ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁴ *William C. Bush*, 40 ECAB 1064 (1989).

⁵ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body, for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁶ *A. George Lampo*, 45 ECAB 441 (1994).

In his July 19, 2001 report, an Office medical adviser cites to the fourth edition of the A.M.A., *Guides* and opines that appellant has a seven percent left leg impairment. As of February 1, 2001, however, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.⁷ Moreover, a schedule award must be based on a detailed description of the impairment⁸ and it is not clear whether the medical adviser based his opinion on an appropriate description of the impairment. In view of the left knee surgeries and the subsequent venous thrombosis, an opinion as to the degree of permanent impairment should be based on a detailed narrative medical report. The case will accordingly be remanded to the Office to prepare a comprehensive statement of accepted facts and referral of appellant and the case record to an appropriate second opinion physician for an opinion as to the degree of permanent impairment to the left leg under the fifth edition of the A.M.A., *Guides*.

With respect to the pay rate issue, the weekly pay rate utilized by the Office was \$476.23, which appears to represent a date-of-injury pay rate. On appeal appellant states that his last salary was \$744.42 per week. The relevant details regarding appellant's return to work and subsequent periods of disability are not evident from the record. The Board notes that under the Act monthly pay means the monthly pay at the time of injury, or the time disability begins, or the time compensable disability recurs, if the recurrence begins more than six months after the employee resumes regular full-time employment, whichever, is greater.⁹ On remand, the Office should determine the appropriate pay rate. After such further development as the Office deems necessary, it should issue an appropriate decision as to the degree of permanent impairment and the proper pay rate.

⁷ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁸ See *James E. Jenkins*, 39 ECAB 860 (1988); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

⁹ 5 U.S.C. § 8101(4).

The decisions of the Office of Workers' Compensation Programs dated September 13 and June 15 2001 and are set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
September 11, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member