United States Department of Labor
Employees' Compensation Appeals Board

LEROYE D. JONES, Appellant	)	
and	)	**Docket No. 05-1714**
	)	**Issued: December 5, 2005**
U.S. POSTAL SERVICE, NORMANDY POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
LeRoye D. Jones, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 15, 2005 appellant filed a timely appeal from a September 9, 2004 decision of the Office of Workers' Compensation Programs, denying his claims for periods of total disability and a June 1, 2005 decision, finding a two percent impairment of the left lower extremity. Pursuant to 20 C.F.R. § 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issues are: (1) whether appellant was totally disabled for work from February 28 to March 26, May 31 to November 8, 2003 and December 29, 2003 to February 11, 2004 causally related to an accepted February 27, 2003 left knee injury; and (2) whether appellant has more than a two percent impairment of the left lower extremity, for which he received a schedule award. On appeal, appellant asserted that the schedule award was insufficient to "assist with remediation for [his] circumstances" as he was unable to return to his date-of-injury position and no longer felt that he had job security.

FACTUAL HISTORY

The Office accepted that on February 27, 2003 appellant, then a 38-year-old city mail carrier, sustained a left knee strain and torn left medial meniscus when he jumped over a railing to avoid stairs which began to crumble beneath him.[1]

Appellant sought emergency room treatment on February 27, 2003. Dr. Annu Tekonda, a physician specializing in emergency medicine, released him to work on February 28, 2003. In February 28, 2003 reports, Dr. Gary Gray, an employing establishment contract physician specializing in occupational medicine, provided a history of injury and diagnosed a left knee sprain with possible meniscal tear. He released appellant to limited duty. Dr. Gray submitted March 7, 14 and 20, 2003 reports recommending continued work restrictions.[2] In a March 31, 2003 form report, Dr. Gray stated that appellant was partially disabled from February 28 to March 19, 2003 due to a left knee sprain. He released him to full duty as of March 20, 2003. The Office accepted a recurrence of disability commencing April 21, 2003 and ending on or before May 30, 2003.

On October 21, 2003 appellant sought treatment from Dr. Paul S. Lux, an attending Board-certified orthopedic surgeon, who performed left knee arthroscopy on November 19, 2003 to remove a posterior third meniscal tear and excise a synovitic plica. Appellant received wage-loss compensation for the period November 19 to December 28, 2003. Dr. Lux released him to limited duty on December 29, 2003. He submitted progress notes through May 11, 2004 recommending intermittent work limitations due to continuing effusion and synovitis attributable to walking while delivering mail. Repeat imaging studies showed a recurrent meniscal tear with a degenerative cyst requiring surgical repair.

Appellant accepted a modified-duty position on May 13, 2004 and stopped work on June 8, 2004. Dr. Lux performed a second left knee arthroscopy on July 12, 2004 with debridement of the meniscal tear and degenerative meniscal cyst. He held appellant off work from June 28 through August 23, 2004. Appellant returned to limited-duty work on August 31, 2004.[3]

On July 26, 2004 appellant claimed continuation of pay for intermittent absences from February 28 to March 26, 2003 and wage-loss compensation for intermittent absences from May 31 to November 8, 2003 and December 29 to February 11, 2004.[4] In a July 28, 2004 letter, the Office advised appellant of the type of additional evidence needed to establish the claimed periods of disability. The Office requested a report from his attending physician explaining why

[1] Appellant had a history of a 1990 left knee injury and arthroscopy.

[2] Appellant participated in physical therapy in March 2003.

[3] Appellant participated in physical therapy from August through November 2004.

[4] Appellant claimed continuation of pay for work absences on February 28, March 1, 13 and 26, 2003. He claimed wage-loss compensation for the following dates: May 31; July 10 and 25; August 4, 11 and 21; September 4, 5 and 13; October 16, 22 and 25; November 13, 19 to 25 and 27 to 29, December 1 to 3, 5 to 11, 15 to 20 and 23 to 27, 2003; January 6 and February 9, 2004.

appellant was disabled as a result of the accepted medical condition and unable to perform work for the period claimed. The Office afforded him 30 days in which to submit such evidence.

On September 8, 2004 appellant claimed a schedule award.

By decision dated September 9, 2004, the Office denied appellant's claims for continuation of pay for the period February 28 to March 26, 2003 and for wage-loss compensation for the periods May 31 to November 8 and December 29, 2003 to February 11, 2004, finding that he submitted no medical evidence establishing total disability for work.

Appellant performed part-time work in September and October 2004. Dr. Lux submitted reports from September 21 to November 23, 2004 recommending continued work restrictions. In a November 23, 2004 letter, he stated that appellant had 30 to 40 percent of the medial meniscus removed during surgery. On examination he found a full range of left knee motion, good stability, "no sign of meniscal pain" and a slight weakness in left quadriceps tone. Dr. Lux opined that appellant had not yet reached maximum medical improvement. He stated that he had a 20 percent impairment of the left lower extremity. On December 9, 2004 Dr. Lux provided permanent work restrictions against squatting, kneeling, climbing and prolonged walking.

In a March 6, 2005 report, an Office medical adviser noted that the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* did not allow for a 20 percent impairment rating due to a partial medial meniscectomy. He recommended that appellant be referred to an appropriate specialist to obtain an accurate impairment rating. The Office referred appellant, a statement of accepted facts and the medical record to Dr. John A. Gragnani, a Board-certified physiatrist, for an assessment of the percentage of impairment due to the accepted left knee injury.

In a March 30, 2005 report, Dr. Gragnani provided a history of injury and treatment. He related appellant's complaints of subjective weakness with stair climbing and an "aching pain and some feeling of numbness around the knee, sometimes going down towards the foot, since surgery." On examination Dr. Gragnani found slight crepitus, no laxity of the anterior cruciate ligament, good strength of the medial and collateral ligaments and good muscle strength in the left hamstrings and quadriceps. He also found 118 degrees flexion, -4 degrees extension and 4 degrees of valgus. Dr. Gragnani noted an impression of status postsurgical treatment of a left medial meniscus tear, with residual complaints of left knee pain. He noted that appellant had reached maximum medical improvement as of December 2004. Referring to the fifth edition of the A.M.A., *Guides*, Dr. Gragnani opined that Table 17-10 was "not deemed appropriate for rating. Therefore, he referred to Table 17-33, page 546, which gave a rating of two percent of the extremity for a partial medial meniscectomy. "No other rating values were offered or felt appropriate. This cover[ed] all categories of concern, including pain."

The Office referred Dr. Gragnani's March 30, 2005 report to an Office medical adviser. In an April 9, 2005 report, an Office medical adviser reviewed Dr. Gragnani's report and opined that he correctly applied the appropriate portions of the fifth edition of the A.M.A., *Guides*. He concurred with the two percent impairment rating.

By decision dated June 1, 2005, the Office awarded appellant a schedule award for a two percent impairment of the left lower extremity. The period of the award ran from December 31, 2004 to February 9, 2005.

LEGAL PRECEDENT -- ISSUE 1

To establish a causal relationship between a claimed period of disability and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.[5] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

ANALYSIS -- ISSUE 1

On July 26, 2004 appellant claimed continuation of pay for absences from February 28 to March 26, 2003 and wage-loss compensation for intermittent absences from May 31 to November 8, 2003 and December 29 to February 11, 2004. By decision dated September 9, 2004, the Office denied compensation for the claimed periods of disability on the grounds that appellant submitted no medical evidence establishing total disability for work for those periods.

Appellant submitted several reports addressing his condition for the claimed periods. Medical reports encompassing the period February 28 to March 26, 2003 state that he was able to perform limited duty. Dr. Tekonda, an attending physician specializing in emergency medicine, and Dr. Gray, an employing establishment contract physician specializing in occupational medicine, released appellant to limited duty on February 28, 2003. He continued to approve restricted duty in reports dated March 7, 14 and 20, 2003. In a March 31, 2003 report, Dr. Gray opined that he was partially disabled from February 28 to March 19, 2003 and released him to full duty on March 20, 2003. Dr. Gray did not indicate that appellant was totally disabled for work for any portion of the period February 28 to March 26, 2003. He submitted no medical evidence addressing his condition for the period May 31 to November 8, 2003.

Regarding the period December 29, 2003 to February 11, 2004, Dr. Lux, an attending Board-certified orthopedic surgeon, released appellant to limited duty on December 29, 2003. He submitted progress notes through May 11, 2004 recommending intermittent work limitations

[5] *Manuel Gill*, 52 ECAB 282 (2001).

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000).

due to continuing effusion and synovitis in the left knee. However, Dr. Lux did not find appellant totally disabled for work on any date from December 29, 2003 to February 11, 2004.

On July 28, 2004 the Office specifically advised appellant to submit a report from his attending physician verifying a total disability or work for the claimed periods and that such disability was related to the accepted left knee injury. Instead, the medical evidence submitted indicates that he was only partially disabled from February 28 to March 26, 2003 and from December 29, 2003 to February 11, 2004. Appellant submitted no evidence addressing the period May 31, to November 8, 2003. He has failed to meet his burden of proof in establishing the claimed periods of total disability.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of the Act[8] and its implementing regulation[9] sets 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, 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 implementing regulations as the appropriate standard for evaluating schedule losses.[10]

For lower extremity impairments due to meniscectomies, Table 17-1, page 525 of the A.M.A., *Guides*[11] directs the clinician to utilize section 17.2j, beginning at page 545,[12] as the appropriate method of impairment assessment. Section 17.2j, entitled "Diagnosis-Based Estimates," instructs the clinician to assess the impairment using the criteria in Table 17-33 at page 546, entitled "Impairment Estimates for Certain Lower Extremity Impairments."[13] According to Table 17-33, a partial medial meniscectomy is equivalent to a two percent impairment of the lower extremity.[14] Additional percentages of impairment are awarded for laxity of the cruciate or collateral ligaments.[15]

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404 (2003).

[10] *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

[11] A.M.A., *Guides*, (5th ed. 2001) at Table 17-1, page 525.

[12] *Id*. at 545.

[13] A.M.A., *Guides*, (5th ed., 2001) at Table 17-33, page 546.

[14] *Id*.

[15] *Id*.

ANALYSIS -- ISSUE 2

The Office accepted that appellant sustained a left knee sprain and torn medial meniscus resulting from the February 27, 2003 fall, requiring a partial medial meniscectomy on November 19, 2003 and a repeat procedure on July 12, 2004 to repair a recurrent tear and remove a degenerative cyst. He claimed a schedule award on September 8, 2004.

Dr. Lux, an attending Board-certified orthopedic surgeon, opined in a November 23, 2004 report, that appellant had a 20 percent impairment of the left lower extremity due to the partial meniscectomies. He indicated that appellant had reached maximum medical improvement as of December 9, 2004. However, Dr. Lux did not refer to the A.M.A., *Guides* in explaining how he arrived at the 20 percent impairment rating. An Office medical adviser noted that the A.M.A., *Guides* did not provide for a 20 percent lower extremity impairment rating due to a partial medial meniscectomy. Therefore, Dr. Lux's opinion regarding the percentage of permanent impairment is of diminished probative value.[16]

The Office referred appellant, the medical record and statement of accepted facts to Dr. Gragnani, a Board-certified physiatrist, for a schedule award assessment. He submitted a March 30, 2005 report. Dr. Gragnani recommended a two percent impairment rating for the left lower extremity based on Table 17-33, page 546 of the A.M.A., *Guides*, based on the partial medial meniscectomies. He explained that there were no findings to justify any added impairment due to ligamentous laxity, abnormal range of motion or pain. On April 9, 2005 the Office medical adviser reviewed Dr. Gragnani's March 30, 2005 report and concurred with his assessment and its methodology. The Board finds that Dr. Gragnani used the appropriate portions of the A.M.A., *Guides* to determine that appellant had a two percent impairment of the left lower extremity due to the accepted left knee injury. He provided sufficient rationale to explain why there were no findings justifying a greater impairment rating, such as pain or instability in the knee. The Board finds that Dr. Gragnani's opinion, as reviewed by the Office medical adviser, represents the weight of the medical evidence in this case, as it is sufficiently rationalized and based upon the appropriate criteria as set forth in the A.M.A., *Guides*.[17]

CONCLUSION

The Board finds that appellant has not established that he was totally disabled for work for the periods February 28 to March 26, 2003 and May 31 to November 8, 2003 and December 29, 2003 to February 11, 2004. The Board further finds that he has not established that he sustained greater than a two percent impairment of the right lower extremity, for which he received a schedule award.

[16] *Norman D. Armstrong*, 55 ECAB ___ (Docket No. 04-306, issued June 23, 2004).

[17] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Worker's Compensation Programs dated June 1, 2005 and September 9, 2004 are affirmed.

Issued: December 5, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board