United States Department of Labor
Employees' Compensation Appeals Board

BENNIE RICHARDSON, Appellant	)	
and	)	
DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, COMMUNITY PLANNING & DEVELOPMENT DIVISION, New Orleans, LA, Employer	)	**Docket No. 05-1801** **Issued: December 9, 2005**

Appearances:
Bennie Richardson, 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 30, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 6, 2005, awarding him 86.4 weeks of compensation for a 30 percent impairment to his left leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant has more than a 30 percent impairment to his left leg, for which he received a schedule award.

FACTUAL HISTORY

On May 16, 2002 appellant, then a 43-year-old community planning and development representative, filed a claim alleging that he sustained injuries in a motor vehicle accident on March 19, 2002 while in the performance of duty. The Office accepted the claim for left lateral

meniscus tear and sprain/strains of the shoulder an upper arms. Appellant underwent left knee arthroscopic surgery in November 2002 and a left high tibial osteotomy on December 26, 2002. He returned to work on a full-time basis in July 2003.

In a report dated September 3, 2004, Dr. Deryk Jones, an orthopedic surgeon, stated that appellant was status post high tibial osteotomy, meniscal reconstruction, medial femoral condyle chondrocyte implantation and trochlear chondrocyte implantation. He opined that he had a 10 percent impairment to his left leg. In a report dated January 18, 2005, Dr. Jones opined that appellant had a 25 percent left leg impairment. He stated that this was based on continued limitations in activity.

An Office medical adviser reviewed the medical evidence and opined in a February 28, 2005 report that it was insufficient to establish the degree of impairment. He recommended referral to a physician familiar with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

The Office referred appellant, medical records and a statement of accepted facts to Dr. Christopher Cenac, an orthopedic surgeon. In a report dated May 3, 2005, Dr. Cenac provided a history and results on examination. He reported that "the left leg is longer than the right" by one half an inch and also that "the left leg is smaller that the right by two centimeters above the knee." Dr. Cenac noted a slight valgus deformity and stated that "quad function is 4/5." He reported that x-rays showed a slight medial joint space narrowing. Dr. Cenac did not provide further detail on x-ray results or provide range of motion results. With respect to permanent impairment, he reported no impairment for "limp [sic] length discrepancy" or gait derangement. Dr. Cenac found that appellant had 10 percent impairments each for thigh atrophy, weakness, valgus deformity and loss of motion. He also found a seven percent impairment due to "arthritic changes and loss of the medical compartment."

In a report dated June 7, 2005, an Office medical adviser stated that the impairments found by Dr. Cenac could not be combined under Table 17-2 of the A.M.A., *Guides*.[1] The medical adviser stated that a more appropriate method was a diagnosis based-estimate and a good result for a high tibial osteotomy was a 25 percent leg impairment under Table 17-33.[2] In addition, the medical adviser found a seven percent impairment for arthritis, based on "three millimeter cartilage interval, Dr. Cenac's apparent estimate." The medical adviser combined 25 percent and 7 percent under the Combined Values Chart for a 30 percent left impairment.

By decision dated July 6, 2005, the Office issued a schedule award for a 30 percent impairment to the left leg. The period of the award was 86.4 weeks commencing May 3, 2005.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use, of a member or function of the body, the

[1] A.M.A., *Guides* 526, Table 17-2. This table is a guide to the appropriate combination of evaluation methods.

[2] *Id.* at 547, Table 17-33 provides leg impairments based on a specific diagnosis.

claimant is entitled to a schedule award for the impairment of the scheduled member or function.[3] 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.[4] In obtaining medical evidence required for a schedule award, the evaluation must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[5]

When the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues.[6]

ANALYSIS

The Office referred appellant for examination by Dr. Cenac. It is the Office's obligation to secure a medical report that is sufficient to resolve the issues relating to the degree of permanent impairment in this case. While an Office medical adviser may review the findings of a second opinion physician and offer an opinion that differs from the second opinion physician, the second opinion's medical report must provide adequate findings on which to base a schedule award determination.

In this case, Dr. Cenac did not provide a reasoned medical opinion or the necessary physical examination findings or results of diagnostic tests to properly determine the degree of impairment. For example, an impairment based on arthritis requires x-rays showing a specific cartilage interval.[7] The Office medical adviser speculated that Dr. Cenac had estimated a three millimeter interval, but his report does not provide specific x-rays findings. In addition, Dr. Cenac noted a valgus deformity and opined that appellant had a 10 percent impairment,

[3] 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).

[4] *A. George Lampo*, 45 ECAB 441 (1994).

[5] *See Peter C. Belkind*, 56 ECAB ___ (Docket No. 05-655, issued June 16, 2005); *Noe L. Flores*, 49 ECAB 344 (1998); *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

[6] *See Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

[7] A.M.A., *Guides* 544, Table 17-31. A three millimeter cartilage interval is a seven percent leg impairment.

without providing the specific degree of deformity. The A.M.A., *Guides* require that the actual degree of deformity or misalignment be provided to determine the impairment.[8]

Dr. Cenac also provided an impairment rating for loss of motion, without providing the actual range of motion results. Knee impairments for loss of range of motion are determined under Table 17-10 and require specific flexion and flexion contracture results.[9] The Board also notes that Dr. Cenac appeared to describe a limb length discrepancy; the A.M.A., *Guides* provide that the distance between the anterior superior iliac spine and the medial malleolus is measured, and then Table 17-4 is applied to determine any impairment.[10] It is not clear how Dr. Cenac measured the limbs and he opined that there was no impairment without further explanation. The Office medical adviser did not discuss the issue.

The Board accordingly finds that the medical evidence is not sufficient to make an adequate determination of whether appellant has more than the 30 percent impairment of his left lower extremity. The case will be remanded to the Office to secure a medical report that contains detailed findings with respect to the left leg impairment that is sufficient to properly apply the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the report of the second opinion physician was not sufficiently detailed with respect to the left leg impairment and the case requires further development.

[8] *Id.* at 537, Table 17-10 (valgus deformity impairment based on at least 10 degrees of deformity) and 547, Table 17-33 (10 to 14 degrees of tibial misalignment is a 20 percent impairment, 15 to 19 degrees is a 30 percent impairment).

[9] *Id.* at 537, Table 17-10.

[10] *Id.* at 528, Table 17-4.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 6, 2005 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 9, 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