United States Department of Labor
Employees' Compensation Appeals Board

RONNIE L. PONDER, Appellant	)	
and	)	**Docket No. 06-379**
	)	**Issued: July 7, 2006**
DEPARTMENT OF THE ARMY, RED RIVER ARMY DEPOT, Texarkana, TX, Employer	)	

Appearances:
Ronnie L. Ponder, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 30, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated November 18, 2005, which denied his claim for a schedule award. 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 established that he is entitled to a greater schedule award for his legs than that for which he previously received schedule awards.

FACTUAL HISTORY

This case has previously been on appeal before the Board.[1] In a November 1, 1995 decision, the Board set aside and vacated the Office's December 30 and August 9, 1993

[1] Docket No. 94-901 (issued November 1, 1995).

decisions.[2] The Board found that appellant had submitted medical evidence supporting an aggravation of chondromalacia patella in both knees. The Board remanded the case for further development on the issue of whether appellant's knee condition was aggravated by factors of his federal employment. The facts and the history contained in the prior appeal are incorporated by reference.[3]

After development of the evidence, on March 28, 1996, the Office accepted appellant's claim for aggravation of preexisting bilateral chondromalacia of the patella. Appellant received appropriate compensation benefits. On January 30, 1997 the Office granted appellant a schedule award for 10 percent permanent impairment of the left leg and 15 percent permanent impairment of the right leg. The award covered a period of 72 weeks from December 11, 1995 to February 1, 1997.

On June 9, 2003 the Office granted appellant a schedule award for 29 percent permanent impairment of the "bilateral knees." The award resulted in appellant receiving an additional 4 percent as he had previously received 25 percent. The award covered a period of 11.5 weeks from April 28 to July 17, 1997. The Office medical adviser's report indicated that 17 percent impairment was attributable to the left leg and 12 percent was attributable to the right leg.[4]

Appellant subsequently filed a claim for a schedule award on April 22, 2005.

On April 29, 2005 the Office received an April 21, 2005 report in which Dr. Norris C. Knight, a Board-certified orthopedic surgeon, and treating physician, diagnosed severe osteoarthritis on the left knee and moderate osteoarthritis on the right and determined that appellant was in need of a total knee replacement on the left. He also advised that appellant was an excellent candidate for "S[ynvisc]," therapy on the right.

By letter dated May 17, 2005, the Office requested that appellant's physician, Dr. Rodney R. Chandler, Board-certified in emergency medicine, provide an impairment rating pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (5th ed. 2001) (A.M.A., *Guides*). In particular, the Office requested that appellant's physician indicate whether appellant had reached maximum medical improvement and, if so, the approximate date. The Office also requested that Dr. Chandler provide his recommended percentage of impairment of the affected member(s) and show how he arrived at the figure using applicable tables in the A.M.A., *Guides* and a description of the subjective complaints causing impairment pain and discomfort.

[2] The record reflects that appellant has an accepted claim for degeneration of the IV disc site, a displaced cervical intervertebral disc and brachial neuritis and radiculitis. File number 160211797.

[3] The record reflects that appellant stopped work on April 19, 1993 and retired on disability.

[4] When rendering impairment estimates where multiple members are affected by an accepted injury, the medical adviser should clearly set forth those factors considered in arriving at the percentage of impairment for each member. In turn, the claims examiner should issue schedule awards for each member and not "combine" the impairment values into a single award. Otherwise, the character and degree of impairment to each member has not been correctly stated.

By letter dated May 20, 2005, the Office requested that appellant's physician, Dr. Night provide an opinion regarding whether his request for surgical authorization was medically necessary due to the work-related injury of April 16, 1993.

In a May 23, 2005 report, Dr. Knight advised that appellant's left knee was worse than the right and that he "had significant changes on the left that would require a total knee replacement to clear his symptoms. In addition, S[ynvisc] would be done on the right side at the same time." He noted that they were awaiting authorization for the procedures and noted that appellant had a 20-year history of conservative treatment and opined that the proposed procedures were within the realms of accepted medical practice.

In a June 6, 2005 report, Dr. Knight recommended a series of Synvisc injections in the right knee and total knee replacement on the left. He advised that appellant was set up for Synvisc injections on the right side and that he would proceed with the total knee replacement on the left. He also provided an impairment rating based upon appellant's present level of impairment and opined that appellant had an impairment of 25 percent to the left lower extremity and 7 percent on the right lower extremity.

By decision dated July 19, 2005, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence supported that appellant had not reached maximum medical improvement. The Office indicated that Dr. Knight had requested authorization to perform a total knee replacement of the left knee.

On August 12, 2005 appellant requested reconsideration.

In an August 17, 2005 report, the Office medical adviser determined that a left knee replacement and Synvisc injections on the right were medically appropriate and related to the accepted work-related injury. On August 19, 2005 the Office authorized a total knee arthroplasty for the left knee.

In a treatment note dated August 2, 2005, Dr. Knight diagnosed bilateral osteoarthritis and traumatic arthritis of the knees which was work related. He noted that the Synvisc injection on the right was a failure and opined that bilateral total knee replacement was justified and he was awaiting authorization. In an August 23, 2005 treatment note, Dr. Knight noted that he had received authorization for the total knee replacement surgery and would schedule appellant for surgery. In a September 13, 2005 report, he opined that without the "definitive surgical management, this patient is at MMI [maximum medical improvement]." Dr. Knight opined that appellant had an impairment of 21 percent to the left lower extremity and 20 percent to the right lower extremity. On September 14, 2005 appellant underwent a left total knee replacement performed by Dr. Knight. Appellant was discharged on November 17, 2005.

By decision dated November 18, 2005, the Office denied modification of its July 19, 2005 decision. The Office noted that appellant had not reached maximum medical improvement with respect to either leg as appellant underwent a left total knee replacement on September 14, 2005 and a total knee replacement was recommended for the right leg.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[5] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.[6] The Act, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[7] The Act's implementing regulation has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule award losses.[8]

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. A schedule award is not payable until maximum improvement of the claimant's condition has been reached.[9] Maximum improvement means that the physical condition of the injured member's body has stabilized and will not improve further.[10] The question of when maximum medical improvement has been reached is a factual one which depends on the medical evidence of record. The determination of such date in each case is to be made based upon the medical evidence.[11]

ANALYSIS

The Board notes that appellant's treating physician was asked by the Office to provide a medical opinion addressing appellant's degree of permanent impairment under the A.M.A., *Guides* and the date of maximum medical improvement. On August 2, 2005 Dr. Knight advised that the Synvisc injection on the right side had failed and that bilateral knee replacement was appropriate. On September 13, 2005 Dr. Knight explained that without the surgery appellant was at "MMI" and opined that appellant had a 21 percent impairment to his left lower extremity and a 20 percent impairment to his right lower extremity. However, on September 14, 2005 he performed a total left knee replacement. Appellant was discharged on November 17, 2005.

The Board notes that Dr. Knight advised that appellant was at MMI, in has September 19, 2005 report without surgical intervention. However, he indicated that surgery to both knees was warranted and subsequently performed a left knee replacement. Thus, it cannot be found that appellant's condition has stabilized and would not improve any further. Dr. Knight advised

[5] 5 U.S.C. §§ 8101-8193.

[6] 5 U.S.C. § 8107.

[7] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[8] 20 C.F.R. § 10.404.

[9] *See Robert L. Mitchell, Jr.*, 34 ECAB 8 (1982).

[10] *Joseph R. Waples*, 44 ECAB 936 (1993).

[11] *Richard Larry Enders*, 48 ECAB 184 (1996); *Joseph R. Waples*, *supra* note 10.

additional surgery was warranted for both knees and performed the left knee procedure, with a right knee procedure contemplated. The Board finds that maximum medical improvement had not been reached. The Office properly found that appellant was not entitled to a schedule award.

Although appellant contends that he is entitled to a schedule award for permanent impairment of his lower extremities due to the accepted work-related condition, he has the burden to submit probative medical evidence in support of his claim.[12] The evidence of record is insufficient to support an increased schedule award at this time.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for an increased schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 18, 2005 is hereby affirmed.

Issued: July 7, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[12] A description of a claimant's impairment must be obtained from his or her physician which is in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with it resulting restrictions and limitations. *James E. Archie*, 43 ECAB 180 (1991); *Patricia J. Lieb*, 42 ECAB 861 (1991).