United States Department of Labor
Employees' Compensation Appeals Board

CHARLIE L. ROWE, Appellant	)	
and	)	**Docket No. 06-548**
	)	**Issued: July 7, 2006**
DEPARTMENT OF THE NAVY, MARINE CORPS AIR STATION, Cherry Point, NC, Employer	)	

Appearances:
Charlie L. Rowe, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 6, 2006 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated January 6, 2005 which found that he was not entitled to an increased schedule award. He also appealed a November 4, 2005 decision which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUES

The issues are: (1) whether appellant has more than a 50 percent impairment of his right knee, for which he received schedule awards; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits under 5 U.S.C. § 8128(a). On appeal, appellant contends that his knee injury has aggravated other health problems and has prevented him from getting appropriate therapy.

FACTUAL HISTORY

On October 16, 1980 appellant, then a 45-year-old pipe fitter, sustained an employment-related right knee injury, accepted for permanent aggravation of chondromalacia of the patella.[1] He stopped work that day. On January 13, 1982 he was granted a schedule award for a 10 percent impairment of the right leg. By decision dated April 8, 1982, the Office reduced appellant's wage-loss compensation based on his capacity to earn wages as a customer service clerk. In decisions dated August 2, 1982 and March 19, 1986, it denied modification of the April 8, 1982 decision. Appellant secured part-time nonfederal employment and returned to a limited-duty position as an emergency services clerk[2] at the employing establishment for a brief period in 1992 and 1993. On June 18, 1993 he underwent arthroscopy of the right knee with partial meniscectomy. By decision dated December 20, 1993, the Office determined that his actual wages as an emergency services clerk fairly and reasonably represented his wage-earning capacity. On September 20, 1994 he was granted a schedule award for an additional three percent right lower extremity impairment. Appellant retired effective December 1, 1994.

On April 16, 1997 he underwent total knee replacement (TKR) and, on April 24, 1998, was granted a schedule award for an additional 25 percent right lower extremity impairment, for a total 38 percent impairment. In a November 3, 1997 report, Dr. Edwin C. Bartlett, a Board-certified orthopedic surgeon, advised that appellant still had pain six months after his knee replacement and noted a history of cardiovascular disease with bypass surgery. He advised that appellant might have claudication and recommended a vascular surgery consult.

On January 25, 2000 appellant filed an application for review with the Board of an April 22, 1999 Office decision. In an order dated March 28, 2002, the Board dismissed the appeal on the grounds that the record did not contain a final decision of that date or any other final decision over which it could take jurisdiction. The Board noted that the record contained an informational letter dated April 22, 1999, in which an Office claims examiner explained that appellant was not entitled to an increased award.[3]

On October 23, 2000 appellant underwent revision of his right total knee arthroplasty. This procedure was approved by the Office on January 12, 2001. On November 28 and December 11, 2003 appellant filed additional schedule award claims and submitted medical reports from Dr. Scott Q. Hannum, a Board-certified orthopedic surgeon. In an August 4, 2003 report, the physician noted appellant's history of injury and previous treatment and diagnosed right knee pain following revision. In reports dated September 29, 2003, Dr. Hannum provided an impairment rating, opining that, under the second edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[4]

[1] The claim was initially accepted for a right knee contusion and any additional conditions denied in a June 25, 1981 decision. This decision was vacated on August 18, 1981 and after referral for a referee examination, in December 1981, chondromalacia of the right patella was accepted as employment related.

[2] Appellant was initially returned to the pipe fitter position, but upon his physician placing further restrictions on his physical activity, he was offered a clerk position.

[3] Docket No. 01-618.

[4] A.M.A., *Guides*.

appellant had a total of 70 to 80 points for pain, range of motion, stability and other problems which represented a "fair" result for his knee replacement or a 50 percent right lower extremity impairment.[5] In a report dated December 4, 2003, an Office medical adviser advised that, based on Dr. Hannum's opinion of a "fair" result, under Table 17-33 of the fifth edition of the A.M.A., *Guides*, appellant had a 50 percent permanent impairment of the right lower extremity.

By decision dated December 29, 2003, appellant was granted a schedule award for an additional 12 percent impairment or a total right lower extremity impairment of 50 percent.

On September 20, 2004 appellant filed a schedule award claim and submitted additional medical evidence. In a July 30, 2004 report, Dr. C. Steven Powell, Board-certified in vascular surgery, advised that appellant had bilateral lower extremity claudication which, together with his right knee replacement, limited his ability to walk, which precluded a walking program and made him a poor surgical candidate. In an October 6, 2004 report, Dr. Hannum noted that he had seen appellant a total of three times from August 4 through October 6, 2003. Upon review of his records and the fifth edition of the A.M.A., *Guides*, he found that appellant had a 50 percent right lower extremity impairment and concluded that this was his final impairment rating. In a November 15, 2004 report, Dr. Joseph R. Overby, a family practitioner, advised that, while appellant's vascular consultant recommended a walking program, appellant was unable to do this due to his chronic right knee problems. He opined that appellant was totally disabled.[6]

By decision dated January 6, 2005, the Office found that appellant was not entitled to an additional schedule award for his right lower extremity. The Office noted that the evidence submitted did not contain a report, based on the A.M.A., *Guides*, which demonstrated that he had greater than the 50 percent impairment previously awarded. On October 11, 2005 appellant requested reconsideration, contending that his knee pain should be considered in his schedule award evaluation and that he was precluded from a daily walking regimen, as recommended by his vascular surgeon, Dr. Powell and his cardiologist Dr. John Rose. Appellant stated that he was entitled to additional consideration because he was put back into his job as a pipe fitter when he had not been released to do so by his orthopedic surgeon, Dr. Harold Vandersea. Appellant also submitted a duplicate of an October 6, 2003 treatment note from Dr. Hannum and a February 4, 2005 report, in which Dr. Powell diagnosed atherosclerotic arterial occlusive disease of the lower extremities. He advised that this condition was not injury related, noting that appellant's arteriogram demonstrated aortoiliac and femoral occlusive disease, which was the cause of his claudication symptoms in his lower extremities. Dr. Powell stated that he had recommended a progressive walking program, which was precluded because Dr. Hannum advised that he could not walk. By decision dated November 4, 2005, the Office denied appellant's reconsideration request.

[5] Dr. Hannum also recommended a motorized wheelchair and chairlift, which were authorized.

[6] Appellant also submitted an October 11, 2004 report in which Dr. Gordon H. Downie, Board-certified in internal medicine and pulmonary disease, noted a history of asbestos exposure and diagnosed obstructive lung disease.

LEGAL PRECEDENT -- ISSUE 1

Under section 8107 of the Federal Employees' Compensation Act[7] and section 10.404 of the implementing federal regulations,[8] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*[9] has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[10] Chapter 17 provides the framework for assessing lower extremity impairments.[11]

ANALYSIS -- ISSUE 1

The Board finds that appellant does not have more than a 50 percent right lower extremity impairment. Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.[12] The Office therefore properly referred Dr. Hannum's September 29, 2003 report to an Office medical adviser. Based on Dr. Hannum's findings and analysis, the Office medical adviser assessed appellant's right lower extremity impairment and provided a basis for his rating in accordance with the A.M.A., *Guides*. While Dr. Hannum stated that he used the second edition of the A.M.A., *Guides*, he provided findings indicating that appellant had a fair result following the total knee replacement, which yielded a 50 percent lower extremity impairment. In a December 4, 2003 report, the Office medical adviser advised that maximum medical improvement had been reached on September 29, 2003. He properly found that Table 17-33 of the A.M.A., *Guides* provides that a total knee replacement with a fair result, which is based on the point system found at Table 16-35, yielded a 50 percent lower extremity impairment.[13] In an October 6, 2004 report, Dr. Hannum utilized the fifth edition of the A.M.A., *Guides*, to provide a final impairment rating of 50 percent to the right lower extremity.

Appellant contends on appeal that his claudication was aggravated by his employment injury and should be considered in his impairment rating. The only medical evidence pertaining to this appears to be Dr. Bartlett's November 3, 1997 treatment note. He noted that he could not

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[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] A.M.A., *Guides* (5th ed. 2001), *supra* note 4.

[10] *See Joseph Lawrence, Jr.*, 53 ECAB 331 (2001); *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[11] A.M.A., *Guides*, *supra* note 4 at 523-64.

[12] *See Thomas J. Fragale*, 55 ECAB ____ (Docket No. 04-835, issued July 8, 2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

[13] A.M.A., *Guides*, *supra* note 4 at 546-47, 549.

fully explain appellant's complaint of pain and speculated that it might be claudication and suggested a vascular consult. This evidence is not well rationalized and Dr. Bartlett did not address whether there was any permanent impairment attributable to any vascular condition. The medical evidence does not establish that there is any vascular component to be considered.[14]

The Board therefore concludes that in this case, as the Office medical adviser properly analyzed Dr. Hannum's September 29, 2003 report and provided a basis for his impairment rating by referencing the specific tables in the A.M.A., *Guides* on which he relied, appellant has not established that he is entitled to a schedule award for his right lower extremity greater than the 50 percent previously awarded on December 29, 2003.

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[15] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[16] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[17] Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[18]

ANALYSIS --ISSUE 2

In his October 11, 2005 letter, requesting reconsideration, appellant contended that his knee pain should be considered in his schedule award evaluation, that his TKR precluded him from a daily walking regimen as recommended by his physicians and that he was entitled to additional consideration because he was put back into his job as a pipe fitter when he had not been released to do so by his orthopedic surgeon, Dr. Vandersea. The Board, however, finds that these arguments do not demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Regarding appellant's opinion that pain should be considered in assessing his schedule award, Section 18.3b of the fifth edition of the A.M.A., *Guides* provides that pain-related impairment should not be used if the condition can be adequately rated under another section of the A.M.A., *Guides*. Office procedures provide that, if the conventional impairment adequately encompasses

[14] Table 17-2, the cross usage chart does not provide consideration of a vascular impairment under a diagnosis based estimate has been provide.

[15] 20 C.F.R. § 10.606(b)(2).

[16] 20 C.F.R. § 10.608(b).

[17] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[18] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

the burden produced by pain, the formal impairment rating is determined by the appropriate section of the A.M.A., *Guides*.[19] Table 17-35, which was used by both Dr. Hannum and the Office medical adviser in conjunction with Table 17-33, includes an analysis for pain in its point-rating system.[20] As stated above, appellant's claudication condition has not been accepted as employment related and his argument that he was improperly returned to work as a pipe fitter in 1992 is irrelevant to an impairment rating.[21] Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).[22]

With respect to the third above-noted requirement under section 10.606(b)(2), with his reconsideration request appellant submitted a duplicate of Dr. Hannum's October 6, 2003 treatment note. The Board has held that the submission of evidence which is duplicative does not constitute a basis for reopening a case.[23] He also submitted a February 4, 2005 report in which Dr. Powell advised that appellant's atherosclerotic arterial occlusive disease of the lower extremities was not injury related, noting that this was the cause of his bilateral lower extremity claudication. As noted above, this condition neither preexisted the October 16, 1980 employment injury nor has been accepted as employment related. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[24] Dr. Powell's report is therefore insufficient to warrant merit review.

CONCLUSION

The Board finds that appellant has failed to establish that he is entitled to a schedule award greater than the 50 percent right lower extremity impairment previously awarded. The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[19] *See Philip A. Norulak*, 55 ECAB ____ (Docket No. 04-817, issued September 3, 2004).

[20] A.M.A., *Guides*, *supra* note 4 at 549.

[21] The Board notes, however, that, by report dated April 23, 1992, his treating Board-certified orthopedic surgeon, Dr. Vandersea, advised that appellant could return to his regular job. After the physician placed further restrictions on appellant's activity, he was offered a clerk position. *Supra* note 2.

[22] 20 C.F.R. § 10.606(b)(2).

[23] *Freddie Mosley*, 54 ECAB 255 (2002).

[24] *Stella M. Bohlig*, 53 ECAB 341 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 4 and January 6, 2005 be affirmed.

Issued: July 7, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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