

facts and the circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.²

On December 3, 2004 appellant, through his attorney, filed a petition for reconsideration regarding the Board's November 29, 2004 decision. By letter dated May 24, 2005, he requested reconsideration of the Board's decision before the Office. Appellant submitted an addendum medical report dated March 25, 2005 from Dr. George L. Rodriguez, a Board-certified physiatrist, who opined that the work activity described in a statement of accepted facts dated November 20, 1991 and in a December 16, 1991 report of Dr. Marie Hatam, an Office referral physician, contributed to the permanent aggravation of the osteoarthritis in both of appellant's knees and accelerated the process that will inevitably lead to the need for total knee replacements in the future.

In an August 23, 2005 letter, the Office advised appellant that, since there was no indication that the Board had acted upon his petition for reconsideration, it did not have jurisdiction over his reconsideration request. The Office subsequently received the Board's May 19, 2005 order which denied appellant's petition for reconsideration on the grounds that he failed to establish an error of fact or law in the Board's November 29, 2004 decision.³

By letter dated September 20, 2005, the Office advised appellant that it would proceed with his May 24, 2005 request for reconsideration. In a letter of the same date, the Office requested that the employing establishment provide any comments regarding appellant's reconsideration request within 20 days. The employing establishment did not respond within the allotted time period.

By decision dated November 25, 2005, the Office denied modification of the prior decisions. It found the medical evidence of record insufficient to establish that factors of appellant's federal employment caused a permanent aggravation of his preexisting osteoarthritis of the knee, entitling him to a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss

² On May 31, 1991 appellant, then a 55-year-old letter carrier, filed an occupational disease claim alleging that on April 22, 1988 he first realized that his osteoarthritis of the weight-bearing joints of his left and right knee was caused or aggravated by factors of his federal employment. By letter dated January 28, 1992, the Office accepted his claim for aggravation of osteoarthritis of both knees. On November 18, 1996 appellant filed a claim alleging that he sustained a recurrence of disability. By decision dated May 14, 1997, the Office denied his claim on the grounds that he failed to submit any medical evidence establishing that he sustained a recurrence of disability causally related to his accepted employment injury. On February 1 and 19, 1997 appellant filed claims for a schedule award.

³ Docket No. 04-1556 (issued May 19, 2005).

⁴ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁵ 20 C.F.R. § 10.404.

of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁶ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁷

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician 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.⁸

ANALYSIS

Appellant has the burden of proof to submit medical evidence establishing that he sustained permanent impairment of both lower extremities according to the pages, tables and grading schemes of the A.M.A., *Guides*. He submitted Dr. Rodriguez's March 25, 2005 medical report which found that the work activity described in a statement of accepted facts dated November 20, 1991 and in a December 16, 1991 report of Dr. Hatam contributed to the permanent aggravation of the osteoarthritis in both of appellant's knees and accelerated the process that will inevitably lead to the need for total knee replacements in the future. Although Dr. Rodriguez opined that there was a causal relationship between permanent impairment of appellant's knees and factors of his employment, he did not provide an impairment rating based on the A.M.A., *Guides*. Therefore, the Board finds that Dr. Rodriguez's report is insufficient to establish appellant's entitlement to a schedule award for his lower extremities. Moreover, Dr. Rodriguez contemplated a future impairment when stating that appellant may have to undergo knee replacements. However, as the Board has held, future injuries do not constitute an injury under the Act and therefore are not compensable.⁹

The Board finds that appellant submitted no rationalized medical evidence that establishes any permanent impairment to his lower extremities causally related to his accepted employment-related aggravation of osteoarthritis of the knees.

⁶ 5 U.S.C. § 8107(c)(19).

⁷ 20 C.F.R. § 10.404 (1999); see also *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002); *Tommy R. Martin*, 56 ECAB ___ (Docket No. 03-1491, issued January 21, 2005).

⁸ *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

⁹ See *Patricia K. Cummings*, 53 ECAB 623 (2002).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to a schedule award for his lower extremities.

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board