United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 06-1593**
	)	**Issued: November 6, 2006**
U.S. POSTAL SERVICE, KENSINGTON STATION, Brooklyn, NY, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 5, 2006 appellant filed a timely appeal from an April 26, 2006 decision of the Office of Workers' Compensation Programs, denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has any permanent impairment causally related to his work-related right knee strain.

FACTUAL HISTORY

On January 10, 2002 appellant, then a 40-year-old letter carrier, filed an occupational disease claim for internal derangement of the right knee caused by long periods of standing. The

Office accepted his claim for a right knee strain. On April 25, 2002 appellant underwent right knee arthroscopic surgery. On December 7, 2004 he filed a claim for a schedule award.

In an April 6, 2005 report, Dr. Alan J. Dayan, an attending Board-certified orthopedic surgeon, indicated that appellant had occasional weather-related pain over the anterolateral aspect of his right knee but no sensory alteration or loss. He had 130 degrees of flexion and 0 degrees of extension. Appellant had no atrophy and no ligament instability. In an August 22, 2005 report, Dr. Dayan stated that, based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[1] appellant had a 17.5 percent permanent impairment of the right lower extremity, including 7.5 percent for loss of range of motion (flexion) and 10 percent for pain.

In a January 5, 2006 report, Dr. Alvin M. Bergman, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on physical examination. He noted that appellant had intermittent right knee pain and stiffness but no swelling or locking. Dr. Bergman stated that he had reached maximum medical improvement on January 5, 2005 following a temporary aggravation of an underlying right knee condition. Appellant had no impairment of the right knee according to Table 17-10 of the fifth edition of the A.M.A., *Guides* based on 145 degrees of flexion and 0 degrees of extension. A prosthesis was not required for knee stability. There was no impairment of function due to weakness, atrophy, pain or discomfort.

Due to the conflict in the medical evidence between Dr. Dayan and Dr. Bergman, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions, to Dr. Ronald Richman, a Board-certified orthopedic surgeon.

In a March 23, 2006 report, Dr. Richman provided a history of appellant's condition and findings on physical examination. He stated:

> "[Appellant] is able to walk with a normal heel toe pattern. [O]n examination in the supine position, [he] shows no apparent swelling of the knee joint and no apparent atrophy of the thigh or calf. By measuring four inches above the superior pole of the patella, there is equal measurement between both thighs. The movement of the right knee is complete and is equal to that of the left knee going from 0 degrees of extension to about 145 degrees of flexion, where the calf and posterior thigh come into contact with each other. There is no pain on palpation along the medial lateral joint lines. There is no pain with compression of the patella femoral articulation. On flexion extension movement at times there is a slight click, which is noted over the anterior lateral aspect of the articulation, but this is not painful and not consistent. There is no ligamentous instability. There is no pain on palpation along the medial lateral joint lines. The McMurry's Test [for a torn meniscus] and the ACL [anterior cruciate ligament] [test] are all normal. The examination of the neurovascular status of the lower extremities [is] negative.

[1] A.M.A., *Guides* (5th ed. 2001).

"The final diagnosis … is status postop[erative] arthroscopy of the right knee, plicectomy and suprapatella synovectomy.

"[Appellant] at the present time is doing very well. I believe that he has reached maximum benefits and no further treatment is necessary. I do not believe that there is any permanent impairment according to the examination of today. The condition sustained from [appellant's] problem of [December 7, 2001] has apparently been resolved."

By decision dated April 26, 2006, the Office denied appellant's claim on the grounds that the weight of the medical evidence did not establish that he had any permanent impairment causally related to his accepted right knee strain.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act[2] and its implementing regulation[3] 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*[4] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

Section 8123(a) of the Act provides that, "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."[6] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[7]

ANALYSIS

The Office accepted that appellant sustained a right knee strain in the performance of duty.

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[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[5] 20 C.F.R. § 10.404.

[6] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

[7] *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

On August 22, 2005 Dr. Dayan stated that appellant had a 17.5 percent permanent impairment of the right lower extremity, including 7.5 percent for loss of range of motion (130 degrees of flexion) and 10 percent for pain, based on the A.M.A., *Guides.*

On January 5, 2006 Dr. Bergman determined that appellant had no impairment of the right knee based on Table 17-10 of the fifth edition of the A.M.A., *Guides.* Appellant had 145 degrees of flexion and 0 degrees of extension of his right knee. There was no impairment of function due to weakness, atrophy, pain or discomfort.

Due to the conflict in medical opinion between Dr. Dayan and Dr. Bergman, the Office properly referred appellant to Dr. Richman for an impartial medical evaluation.

Dr. Richman determined that appellant had no permanent impairment causally related to his December 7, 2001 right knee strain. He stated:

> "[O]n examination in the supine position, [appellant] shows no apparent swelling of the knee joint and no apparent atrophy of the thigh or calf…. The movement of the right knee is complete and is equal to that of the left knee going from 0 degrees of extension to about 45 degrees of flexion…. There is no pain on palpation along the medial lateral joint lines. There is no pain with compression of the patella femoral articulation. On flexion extension movement at times there is a slight click, which is noted over the anterior lateral aspect of the articulation, but this is not painful and not consistent. There is no ligamentous instability. There is no pain on palpation along the medial lateral joint lines…. The examination of the neurovascular status of the lower extremities [is] negative."

The Board finds that the report of Dr. Richman, which is based on a proper factual and medical background, is entitled to special weight. He properly determined that there is no impairment for appellant's right knee flexion of 145 degrees and extension of 0 degrees, according to Table 17-10 at page 537 of the A.M.A., *Guides.* Dr. Richman found no right knee swelling, atrophy, ligamentous instability, neurovascular problems or pain. His report establishes that appellant has no permanent impairment due to his accepted right knee strain.

CONCLUSION

The Board finds that the weight of the medical evidence establishes that appellant has no permanent impairment causally related to his accepted right knee strain.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 26, 2006 is affirmed.

Issued: November 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board