

**United States Department of Labor
Employees' Compensation Appeals Board**

S.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Johnstown, PA, Employer**

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**Docket No. 07-428
Issued: July 2, 2007**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
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 December 6, 2006 appellant filed a timely appeal from November 20 and July 19, 2006 decisions of the Office of Workers' Compensation Programs' decision, adjudicating his schedule award claim. 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 of his right lower extremity causally related to his accepted medical conditions which entitles him to receive a schedule award.

FACTUAL HISTORY

On January 16, 2004 appellant, then a 40-year-old part-time flexible mail handler, filed a traumatic injury claim alleging that he injured his right knee while bending up and down working with trays of mail. The Office accepted his claim for a sprain and strain of the right knee and leg and right plica syndrome of the knee. On February 27, 2004 appellant underwent

right knee arthroscopic surgery and excision of the medial plica. He received continuation of pay and compensation for lost wages from January 18 to May 6, 2004 with the exception of January 29 to 30, 2004 when he performed light-duty work. Appellant returned to work in a light-duty capacity on May 7, 2004 but stopped work again on July 19, 2004. The Office denied appellant's claim for recurrences of disability on July 19 and November 17, 2004. On March 30, 2006 appellant filed a claim for a schedule award.

On April 6, 2006 the Office asked appellant to submit a report from his attending physician in support of his schedule award claim. He responded that his physician did not perform impairment ratings.

On May 25, 2006 the Office referred appellant to Dr. Charles S. Stone, Jr., a Board-certified orthopedic surgeon, for an impairment evaluation. In a June 22, 2006 report, Dr. Stone provided a history of appellant's condition and findings on physical examination. He stated that the accepted employment condition listed in the statement of accepted facts was a sprain and strain of the right knee. Dr. Stone stated:

“Arthroscopic surgery was carried out on February 27, 2004. The only finding at surgery was a medial patella plica, which was released. Postoperatively [appellant] noted no significant improvement.”

* * *

“[Appellant] complains of pain all the time and points to the suprapatellar area of the knee and the medial aspect of the knee. He says the knee clicks occasionally but there is no locking or giving way. [Appellant] states [that] he has limited motion of the knee, limited ability to ambulate and cannot perform any sustained walking or activities of daily living.”

* * *

“[Appellant] walks across the room with a stiff knee gait using a cane. He states that he uses a cane all the time.

“Examination of the right lower extremity shows a [one-half] inch atrophy of the right thigh eight inches above the medial joint line. There is no effusion in the knee joint. No patellofemoral crepitus. [Appellant] moves the right knee from full extension to 125 degrees of flexion actively. Passive motion adds another [10] degrees of flexion with complaints of pain. There is no specific tenderness about the entire knee joint. There is no ligamentous instability to mediolateral stress or anterior posterior stress. There is no rotary instability. McMurray test for medial and lateral menisci tears are negative. There is no peripheral edema. Capillary refill is normal.

“At this time [appellant] has no positive objective findings related to the right knee.”

* * *

“DIAGNOSIS:

“It is my opinion that [appellant] sustained a sprain of the right knee from which he has reached maximum medical improvement and has recovered from that injury.

“It is my opinion that arthroscopic surgery and excision of the medial patellar plica was not related to the work injury. At this time he has no limitations due to the spurring of the right knee.

“[Appellant] has no objective physical findings to support his subjective complaints.”

* * *

“[Appellant] has no physical limitations resulting from a work[-]related injury o[r] preexisting condition.”

* * *

“[Appellant] has recovered from the January 16, 2004 work injury.”

By decision dated July 19, 2006, the Office denied appellant’s claim for a schedule award on the grounds that the medical evidence did not establish that he had any permanent impairment of his right lower extremity causally related to his January 16, 2004 employment injury.

Appellant requested reconsideration and submitted additional evidence. In an August 30, 2006 report, Dr. Michael J. Platto, a Board-certified physiatrist, provided findings on examination and stated that appellant had a four percent impairment of the whole person and a 10 percent impairment of the right lower extremity causally related to his January 16, 2004 employment injury. Dr. Platto stated:

“Motor strength is 5/5 in both lower extremities. Sensation is intact to pin. DTRs [deep tendon reflexes] are 2+ bilaterally in the lower extremities ... [appellant has] 128 [degrees of] flexion, 7 [degrees of] extension lag in the right knee. He does have normal valgus of the right knee at [eight degrees].... [Appellant] does have some mild tenderness to palpation over the right patella and to a lesser degree over the superior patella tendon in the right knee. [T]here is no evidence of instability, no crepitus, very minimal pain with compression and distraction maneuvers of the right knee.

“IMPRESSION:

(1) Sprain/strain, right knee, possible superior patella tendinitis. [T]he only ratable impairment I can detect for [appellant] is a slight extension lag of [seven degrees]. According to Table 17-10, page 537 of the [American Medical Association, *Guides to the Evaluation of Permanent Impairment*] [fifth] [e]dition, this would correspond to a mild 4 percent whole person impairment or an 10 percent lower extremity impairment.

(2) [Appellant] did not have weight bearing x-rays of the right knee or sunrise x-rays of the patella femoral joint for review today.... [H]is impairment level could change should there demonstrate significant cartilage deterioration on the x-rays. I did order these x-rays and [the] final impairment rating will be based with consideration of x-ray findings.”

On September 14, 2006 Dr. Platto stated that x-rays of appellant’s right knee revealed no fractures and unremarkable medial and lateral joint space compartments. The medial knee compartment joint space measured six millimeters (mm) and the lateral knee compartment joint space measured seven mm. He stated that his impairment rating of appellant’s right knee at 10 percent was unchanged following review of the x-rays.

By decision dated November 20, 2006, the Office denied modification of the July 19, 2006 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² set 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*³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (5th ed. 2001); *Guisepppe Aversa*, 55 ECAB 164 (2003).

ANALYSIS

The Office accepted appellant's claim for a sprain and strain of the right knee and leg and right plica syndrome of the knee.

Dr. Stone provided a history of appellant's condition and findings on physical examination. Although the Office has accepted a right plica syndrome of the knee as work related, Dr. Stone opined that it was not work related. He noted that, following his February 27, 2004 surgery, appellant noted no significant improvement. Appellant had pain in the suprapatellar area and medial aspect of the knee. He stated that he had limited motion of the knee, limited ability to ambulate and could not perform any sustained walking or activities of daily living. Dr. Stone stated that findings on physical examination included a one-half inch atrophy of the right thigh eight inches above the medial joint line, full extension and 125 degrees of extension. He stated that appellant had no positive objective findings related to the right knee and had recovered from his January 16, 2004 employment injury. Regarding Dr. Stone's measurement of the atrophy of appellant's right thigh, the A.M.A., *Guides* provides for impairment due to thigh atrophy and also calf atrophy in Table 17-6 at page 530. Section 17.2d, "Muscle Atrophy," at page 530 provides that, in evaluating muscle atrophy of the thigh, circumference measurements should be taken of both thighs at 10 centimeters (cm) above the knees. Calf circumference is measured at the maximum level bilaterally. Dr. Stone measured appellant's thighs at 8 cm, rather than 10 cm as specified in the A.M.A., *Guides*. Additionally, he did not provide measurements for appellant's calves. Dr. Stone noted that appellant experienced constant pain in the knee but did not explain why he had no impairment due to pain. The A.M.A., *Guides* provides for impairment of the lower extremity due to pain or loss of sensation.⁴ Regarding range of motion, Dr. Stone found that appellant had full extension of his right leg. However, Dr. Platto found seven degrees of extension in appellant's right leg which amounts to a 10 percent impairment of the lower extremity according to Table 17-10 at page 537.⁵ Table 17-10 provides that flexion contracture (extension) of five to nine degrees constitutes a 10 percent impairment of the lower extremity.

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 The Board finds that there is a conflict in the medical opinion evidence between Dr. Stone and Dr. Platto as to appellant's right lower extremity impairment. On remand, the Office will refer appellant to an appropriate Board-certified specialist for an evaluation of his right lower extremity in accordance with the fifth edition of the A.M.A., *Guides*.

⁴ *Id.* at fifth edition, 550-53, section 17.2l, "Peripheral Nerve Injuries."

⁵ Dr. Platto found that appellant had a four percent impairment of the whole person for his right lower extremity condition. While the A.M.A., *Guides* provides for impairment to the individual member and to the whole person, the Act does not provide for permanent impairment for the whole person. *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *John Yera*, 48 ECAB 243 (1996). Therefore, appellant is not entitled to a schedule award for the whole body based on his accepted right lower extremity conditions.

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

CONCLUSION

The Board finds that this case is not in posture for a decision. The case is remanded for further development of the medical evidence regarding appellant's claim for a schedule award. After such further development as the Office deems necessary, it should issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 20 and July 19, 2006 are set aside and the case is remanded for further action consistent with this decision.

Issued: July 2, 2007
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