United States Department of Labor
Employee's Compensation Appeals Board

C.T., Appellant	)	
	)	**Docket No. 08-480**
and	)	**Issued: June 17, 2008**
	)	
U.S POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 29, 2007 appellant filed a timely appeal of the November 2, 2007 merit decision the Office of Worker's Compensation Programs which affirmed a decision dated May 10, 2007, 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 the case.

ISSUE

The issue is whether the Office properly denied appellant's claim for a schedule award.

FACTUAL HISTORY

On August 26, 2003 appellant, then a 36-year-old auto mechanic, filed a claim alleging that on August 26, 2003 his knee gave out while he was running to answer a telephone at work. The Office accepted his claim for left knee sprain and expanded his claim to include tear of the left lateral meniscus and authorized arthroscopic surgery which was performed on November 4, 2003. Appellant stopped work on August 26, 2003 and returned to light duty on November 24, 2003 and full duty on August 19, 2004. Appropriate compensation benefits were paid.

Appellant was treated by Dr. Robert Yurick, a Board-certified orthopedist, who first treated appellant on August 29, 2003, for a left knee injury sustained at work. Dr. Yurick noted left knee findings of slight puffiness with significant pain along the lateral joint line and diagnosed possible tear or possible loosening of the lateral or discoid meniscus. In a report dated September 26, 2003, he diagnosed tear of the lateral meniscus and recommended surgery. In an operative report dated November 4, 2003, Dr. Yurick performed an arthroscopy with partial meniscectomy (lateral) of the left knee and diagnosed torn lateral meniscus of the left knee. On November 7, 2003 he noted that appellant's left knee looked good with little swelling and no clicking of the joint. Dr. Yurick prescribed a knee support to be worn at night and crutches. In a duty status report dated November 19, 2003, he noted that appellant could return to work full time, limited duty, on November 24, 2003, subject to restrictions. Appellant submitted a first report of injury dated August 26, 2003, prepared by a physician's assistant, who noted a history of injury and diagnosed left knee sprain. An August 26, 2003 x-ray of the left knee revealed no fracture or subluxation. A September 23, 2003 magnetic resonance imaging (MRI) scan of the left knee revealed mild to moderate joint effusion, tears of the lateral meniscus and posterior horn and probable tear of the posterior horn of the medial meniscus.

Appellant continued to submit reports from Dr. Yurick dated December 1, 2003 to March 1, 2004, who noted that appellant was doing well postoperatively, with range of motion of the left knee measured at 115 degrees, good extension and no swelling. Dr. Yurick recommended continued physical therapy. In a report dated March 26, 2004, he noted that appellant finished the prescribed physical therapy and was doing extremely well with findings upon physical examination of the left knee of essentially normal range of motion, no tenderness, markedly improved quadriceps muscle and an improved osteochondral defect. Dr. Yurick recommended one last check-up in a couple of months. In a duty status report dated March 26, 2004, he indicated that appellant could continue to work full time with restrictions.

On March 30, 2004 appellant requested a change in physicians to Dr. Kenneth W. Chapman, a Board-certified orthopedist, as Dr. Yurick was retiring on April 1, 2004. In a duty status report dated May 18 and August 19, 2004, Dr. Chapman continued appellant's full-time work status with restrictions.

On April 29, 2006 appellant filed a claim for a schedule award.[1]

In a letter dated May 23, 2006, the Office advised appellant of the need for additional medical evidence. Specifically, it requested that appellant submit a physician's opinion regarding the extent of any permanent impairment due to the accepted left knee sprain and tear of the left lateral meniscus. The Office advised that the impairment rating should be prepared in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[2] The Office attached an impairment form to be completed by appellant's treating physician and requested that the form be submitted within 30 days.

[1] The record indicates that appellant relocated to Florida on March 21, 2006.

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

In a decision dated May 10, 2007, the Office denied appellant's claim for a schedule award. It noted that the evidence was insufficient to establish that he sustained permanent impairment to a scheduled member due to his accepted work injury. The Office noted that appellant was advised of the deficiencies in his claim in a letter dated May 23, 2006; however, no additional evidence was received.

On May 17, 2007 appellant through his attorney, requested an oral hearing which was held on September 18, 2007. He was not present at the oral hearing; however, his attorney requested that the record be held open for 30 days so that he could obtain a medical report from his treating physician. The attorney indicated that he had previously attempted to get an impairment determination from appellant's treating physician and was unsuccessful. No additional evidence was received.

In a decision dated November 2, 2007, the hearing representative affirmed the Office decision dated May 10, 2007.

LEGAL PRECEDENT

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

ANALYSIS

Appellant alleges that he is entitled to a schedule award for permanent partial impairment of the left lower extremity. The Office accepted his claim for left knee sprain and tear of the left lateral meniscus.

Appellant, however, failed to submit sufficient medical evidence to establish entitlement to a schedule award for his accepted left knee sprain and tear of the left lateral meniscus. He submitted a report from Dr. Yurick dated March 26, 2004, who noted that he completed physical therapy and was doing extremely well with essentially normal range of motion of the left knee, no tenderness, markedly improved quadriceps and an improving osteochondral defect. Dr. Yurick recommended one last check-up in a couple of months. In duty status reports dated March 26 and August 19, 2004, Drs. Yurick and Chapman respectively indicated that appellant could continue to work full time with restrictions. However, none of the reports from

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *See id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

Drs. Yurick and Chapman included an impairment rating nor did they provide an adequate description of appellant's physical condition so that an impairment rating could be determined by an Office medical adviser. For instance, Dr. Yurick noted in his report dated March 26, 2004 that appellant was "doing extremely well now. He has good motion, essentially normal, no tenderness"; however, he failed to explicitly define impairment in terms of the A.M.A., *Guides*, *i.e.*, whether it was based on findings of pain, loss of range of motion or loss of strength.[6] Additionally, it is unclear from their reports whether appellant reached maximum medical improvement, as Dr. Yurick opined on March 26, 2004, that appellant would undergo a final examination in a couple of months. The Board notes that it is well established that a schedule award cannot be determined and paid until a claimant has reached maximum medical improvement.[7]

In order to determine entitlement to a schedule award appellant's physician must provide a sufficiently detailed description of his condition 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] As Drs. Yurick and Chapman did not adequately describe appellant's condition or correlate his findings with the A.M.A., *Guides*, their reports are insufficient to establish the extent of appellant's permanent impairment. On May 23, 2006 the Office requested that appellant provide a report from his treating physician with regard to his permanent impairment of the left lower extremity in accordance with the A.M.A., *Guides*; however, no additional evidence was submitted. Without the necessary reasoned medical opinion evidence establishing the type and extent of appellant's impairment correlated with the A.M.A., *Guides*, and explaining the causal relationship between these findings and his accepted employment injury, he has failed to establish that he sustained a permanent impairment as a result of his accepted conditions.[9]

CONCLUSION

The Board finds that appellant failed to establish that he is entitled to a schedule award.

[6] *Lela M. Shaw*, 51 ECAB 372 (2000) (where the Board found that a physician's opinion which does not explicitly define impairment in terms of the A.M.A. *Guides*, *i.e.*, whether it be based on findings of pain, loss of range of motion or loss of strength, is insufficient to establish that appellant sustained any permanent impairment due to her accepted employment injury).

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

[8] *Renee M. Straubinger*, 51 ECAB 667, 669 (2000) (where the Board found in providing an estimate of the percentage loss of use of a member of the body listed in the schedule provisions, 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 and its resulting restrictions and limitations).

[9] *Id*.; *see also Lela M. Shaw*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the November 2 and May 10, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 17, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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