United States Department of Labor
Employees' Compensation Appeals Board

P.H., Appellant	)	
	)	
and	)	**Docket No. 08-1804**
	)	**Issued: April 7, 2009**
DEPARTMENT OF THE INTERIOR, U.S. BUREAU OF RECLAMATION, Boulder City, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 10, 2008 appellant filed a timely appeal from a May 22, 2008 decision of the Office of Workers' Compensation Programs granting a schedule award for two percent right lower extremity impairment. 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 appellant has more than two percent permanent impairment of his right lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On August 8, 2007 appellant injured his right knee at work. He claimed that he kneeled on false floor tiles to adjust a computer rack shelf and afterward was unable to stand or straighten his leg from the knee. On April 9, 2008 the Office accepted a right knee meniscus tear. On September 19, 2007 appellant's treating physician performed a diagnostic arthroscopy and an

arthroscopic medical meniscectomy to excise his torn medial meniscus. In an October 3, 2007 medical report, Dr. Michael Ravitch, a Board-certified orthopedic surgeon, advised that appellant's injury was related to his employment. He also opined that appellant's knee was stable, without evidence of ligamentous injury or deficiency and had a full range of motion in flexion and extension.

On March 25, 2008 Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, conducted a second opinion examination. Physical examination revealed a 0 to 125 degree range of motion in appellant's right knee and a 0 to 135 degree range of motion in his left knee. Further, circumferential measurements showed a difference of one centimeter of the right thigh. Dr. Swartz diagnosed appellant with status post partial medial meniscectomy for a medial meniscus tear, finding sufficient evidence that the injury was related to his work. She contended that appellant did not continue to suffer residuals of the injury, noting that he was off work for approximately one month but was currently working regular duty.

Appellant's case was referred to an Office medical adviser for a determination of any impairment. On April 18, 2008 the medical adviser summarized appellant's treatment history, noting that Dr. Swartz found that appellant's right knee had a demonstrated range of motion of 0 to 125 degrees with one centimeter of right thigh atrophy. Referring to Table 17-33 at page 546 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001), the medical adviser concluded that appellant had a two percent impairment of the right lower extremity due to residuals from the partial medial meniscectomy. He also found that the date of maximum medical improvement was March 25, 2008, the date of Dr. Swartz' examination.

On May 14, 2008 appellant filed a claim for a schedule award. In a decision dated May 22, 2008, the Office granted a schedule award for two percent permanent impairment to appellant's right lower extremity, with March 25, 2008 as the date of maximum medical improvement.

On appeal, appellant argues that the date of maximum medical improvement should be October 12, 2007, the date of his last postoperative appointment.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[1] and its implementing regulations[2] 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. 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

[1] 5 U.S.C. §§ 801-8193.

[2] 20 C.F.R. § 10.404.

stands applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[3]

For lower extremity impairments due to meniscectomies or ligament injuries involving the knees, Table 17-1, page 525 of the A.M.A., *Guides* directs the clinician to utilize section 17.2j, beginning at page 545, as the appropriate method of impairment assessment.[4] Section 17.2j, entitled Diagnosis-Based Estimates, instructs the clinician to assess the impairment using the criteria in Table 17-33 at page 546, entitled Impairment Estimates for Certain Lower Extremity Impairments.[5] According to Table 17-33, a partial medial meniscectomy is equivalent to a two percent impairment of the lower extremity.[6]

The A.M.A., *Guides* provide for three separate methods for calculating the impairment of an individual: anatomic, functional and diagnosis based.[7] The evaluating physician must determine which method best describes the impairment of a specific individual based on patient history and physical examination.[8] When uncertain about which method to use, the evaluator should calculate the impairment using different alternatives and choose the method or combinations of methods that gives the clinically accurate impairment rating.[9] If more than one method can be used, the method that provides the higher impairment rating should be adopted.[10]

ANALYSIS

The Office accepted the case for a tear of the meniscus of the right knee. Following an examination by Dr. Swartz, an Office medical adviser reviewed the record to rate permanent impairment using the A.M.A., *Guides*. The Board notes that Dr. Swartz did not provide an impairment rating utilizing the A.M.A., *Guides.* In an April 18, 2008 report, the Office medical adviser referred to Table 17-33 of the A.M.A., *Guides*,[11] determining that appellant had a two percent impairment of the lower extremity due to his partial medial meniscectomy. He also noted that appellant had a one centimeter atrophy of the right thigh. According to Table 17-6 of the A.M.A., *Guides*, using the anatomic method of measurement, a one centimeter atrophy of the thigh allows a range of three to eight percent impairment of the lower extremity.[12]

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[3] *Id.*

[4] A.M.A., *Guides* 525.

[5] *Id.* at 545.

[6] *Id.* at 546.

[7] *Id.* at 525.

[8] *Id*. at 548, 555.

[9] *Id*. at 526, 555.

[10] *Id.* at 527.

[11] *Id*. at 546.

[12] *Id.* at 530.

As noted, if more than one impairment method can be used for rating permanent impairment, the method that provides the higher impairment rating should be adopted.[13] It is the responsibility of the evaluating physician to explain why a particular method was chosen.[14] Here, the Office medical adviser used the diagnostic-based estimate, resulting in two percent impairment. However, the anatomic method allows from three to eight percent impairment of a lower extremity due to atrophy.[15] He did not explain the reason for selecting the diagnostic method and the Board therefore finds that his opinion is insufficient to establish the degree of appellant's permanent impairment.[16] The case will be remanded to the Office to seek clarification from the Office medical adviser regarding appellant's permanent impairment.

The Board notes that, on appeal, appellant argues that the date of maximum medical improvement should be October 12, 2007, the date of his last postoperative appointment. Maximum medical improvement "means that the physical condition of the injured member of the body has stabilized and will not improve further."[17] The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation which is accepted as definitive by the Office.[18]

The record does not contain any medical evidence of an October 12, 2007 postoperative appointment and there is no probative evidence to support maximum medical improvement on this date. In determining maximum medical improvement, the Office properly used the March 25, 2008 date of the second opinion examination and report of Dr. Swartz. In this report, she advised that appellant was not suffering from any residuals of his injury. The Office medical adviser properly used March 25, 2008 as the date of maximum medical improvement in his evaluation determining appellant's permanent impairment.

CONCLUSION

The Board finds that this case is not in posture for a decision and will be remanded for further development of the medical evidence. After such further development as the Office deems necessary, it should issue an appropriate merit decision.

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[13] *Id.* at 526.

[14] *Id. See also P.C.*, 58 ECAB___ (Docket No. 07-410, issued May 31, 2007).

[15] Table 17-2, the cross-usage chart, precludes combining a diagnosis based impairment estimate of the lower extremity with a muscle atrophy rating. *See supra* note 4 at 526.

[16] *See James R. Hill, Sr.*, 57 ECAB 583 (2006) (where the Board remanded the case for clarification from the Office medical adviser as to the reason for choosing one rating method over another. The adviser determined that appellant had two percent impairment of his lower extremity based on the diagnostic-based rating for a medial meniscectomy. The record reflected that appellant also had a one centimeter atrophy of his thigh, which could result in a three to eight percent impairment of the lower extremity using the anatomic method of measurement).

[17] *Marie J. Born*, 27 ECAB 623 (1976), *petition for recon., denied*, 28 ECAB 89 (1976).

[18] *Mark Holloway*, 55 ECAB 321 (2004). *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a) (June 2003).

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Issued: April 7, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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