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D.H., Appellant	)	
	)	
and	)	Docket No. 08-1392
	)	Issued: January 13, 2009
DEPARTMENT OF AGRICULTURE, FOREST	)	
SERVICE, AMADOR RANGER STATION,	)	
Pioneer, CA, Employer	)	
	)	

Case Submitted on the Record

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

On April 11, 2008 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated January 8, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination in this case.

The issue is whether appellant met his burden of proof to establish that he has greater than a 21 percent right lower extremity impairment for which he received a schedule award.

FACTUAL HISTORY

On September 18, 1988 appellant, then a 42-year-old forester/firefighter, sustained a right knee injury in the course of his federal duties. He underwent multiple surgical procedures.¹ On February 15, 2007 he filed a schedule award claim. By letter dated March 13, 2007, the Office asked that he provide a current medical report that contained a description of his permanent impairment in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).²

On April 9, 2007 Dr. David Char, an attending Board-certified physiatrist, noted appellant's medical history and complaints of frequent right knee pain. He provided findings on physical examination and diagnosed chronic right knee pain related to moderate to severe tricompartmental arthritis, status post multiple arthroscopic surgeries with residual chronic pain, poor tolerance/endurance for standing, weight bearing, and ambulation; chronic pain to the tarsometatarsal joints, mostly related to arthritis and degenerative joint disease; and bilateral neuropathy and decreased sensation to the foot, unknown etiology. In an attached impairment evaluation, Dr. Char concluded that appellant had a 19 percent whole person impairment based on his right knee findings.

In a June 5, 2007 report, an Office medical adviser reviewed Dr. Char's report and recommended that additional information be obtained. In a supplemental report dated October 4, 2004, Dr. Char again concluded that appellant had a 19 percent whole person impairment due to his right knee condition.

On November 1, 2007 the Office referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a November 21, 2007 report, Dr. Swartz noted his review of the medical record. He agreed with the diagnosis found in the statement of accepted facts, right knee internal derangement, and advised that, on examination of the right lower extremity, appellant had laxity of the cruciate ligament with mild instability and crepitus and atrophy of one centimeter in the right thigh and right calf. Dr. Swartz advised that maximum medical improvement had been reached and that appellant would eventually require a total knee arthroplasty. By report dated December 18, 2007, an Office medical adviser reviewed the medical record and concluded that appellant had a 21 percent impairment of the right lower extremity.

By decision dated January 8, 2008, appellant was granted a schedule award for a 21 percent impairment of the right lower extremity, for a total of 60.48 weeks, to run from April 9, 2007 to June 5, 2008.

¹ These included procedures on September 20 and October 3, 1988 to repair torn medial and anterior collateral ligaments, a February 27, 1990 flexion contracture repair, a February 18, 2001 debridement and a February 28, 2006 removal of loose bodies with abrasion chondroplasty of the patellofemoral joint and the medial femoral condyle.

² A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act³ and section 10.404 of the implementing federal regulations,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵ Chapter 17 provides the framework for assessing lower extremity impairments.⁶

Office procedures provide that the attending physician should make the evaluation of permanent impairment whenever possible and that the Office may choose to request an opinion from a second opinion specialist when the existing medical evidence, including that obtained from an attending physician, is inadequate, and a detailed, comprehensive report and opinion is needed from a specialist in the appropriate field.⁷ The procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present.⁸

ANALYSIS

The Board finds that appellant is entitled to a schedule award for a 22 percent right lower extremity impairment. Section 17.2j of the A.M.A., *Guides* provides that the evaluating physician must determine whether diagnostic or examination criteria best describes the impairment of a specific individual and should, in general, use only one approach for each anatomic part, taking into consideration the exceptions found in Figure 17-2. The A.M.A., *Guides* further provides that the clinician may assess the impairment using Table 17-33.⁹

Dr. Char, an attending physiatrist, advised that appellant had a 19 percent whole person impairment due to his employment-related knee injury. However, his opinion did not conform

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ See *Joseph Lawrence, Jr.*, *supra* note 2; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ A.M.A., *Guides*, *supra* note 2 at 523-64.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2004); *Jennifer A. Guillary*, 57 ECAB 485 (2005).

⁸ Federal (FECA) Procedure Manual, *id.* at Chapter 2.808.6(d); *Frantz Ghassan*, 57 ECAB 349 (2006).

⁹ A.M.A., *Guides*, *supra* note 2 at 526, 548; see *Tara L. Hein*, 56 ECAB 431 (2005).

with the A.M.A., *Guides*. A schedule award is not payable for an impairment of the whole person.¹⁰ Although Dr. Char made some general reference to the A.M.A., *Guides* in his April 10, 2007 report, he did explain how he reached his impairment rating under the protocols of Chapter 17. Thus, it is unclear how he arrived at his impairment rating. For this reason, it is of diminished probative value.¹¹

Dr. Swartz, an orthopedic surgeon who provided a second opinion evaluation for the Office, did not provide an impairment rating. The Office properly referred the medical record to an Office medical adviser for an opinion on the percentage of impairment in accordance with the A.M.A., *Guides*.¹² In a December 18, 2007 report, the Office medical adviser determined that appellant would be entitled to a greater lower extremity impairment rating using the diagnosis-based method described in Table 17-33 of the A.M.A., *Guides*. He found that appellant had 10 percent impairment based on his partial medial and lateral meniscectomy procedures.¹³ The Office medical adviser further found that, based on the medical examination evidence, appellant also had laxity of his right knee and awarded an additional seven percent.¹⁴ Table 17-2 of the A.M.A., *Guides* provides that impairments found under Table 17-33 can be combined with peripheral nerve injuries.¹⁵ In this case, following review of the medical evidence, the Office medical adviser rated appellant's pain impairment under Table 16-10 as Grade 2 or 80 percent, identified the femoral nerve under Table 17-37 which provides a maximum of a 7 percent impairment, and properly multiplied the two to find a 5.6 percent impairment which, when rounded up, equaled a 6 percent peripheral nerve impairment.¹⁶ The Office medical adviser concluded that, under the Combined Values Chart of the A.M.A., *Guides*, appellant had 21 percent right upper extremity impairment. There is no evidence of greater impairment.

CONCLUSION

The Board finds that appellant has no more than 21 percent right lower extremity impairment.¹⁷

¹⁰ *Brent A. Barnes*, 56 ECAB 336 (2005).

¹¹ *Linda Beale*, 57 ECAB 429 (2006).

¹² *Frantz Ghassan*, *supra* note 8.

¹³ A.M.A., *Guides*, *supra* note 2 at 546.

¹⁴ *Id.*

¹⁵ *Id.* at 526.

¹⁶ *Id.* at 482, 552.

¹⁷ A claimant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Tommy R. Martin*, 56 ECAB 273 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 8, 2008 be affirmed.

Issued: January 13, 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