

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

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**Z.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cleveland, OH Employer**

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**Docket No. 09-189  
Issued: July 21, 2009**

*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  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 27, 2008 appellant, through his attorney, filed a timely appeal from March 20 and September 29, 2008 merit decisions of the Office of Workers' Compensation Programs granting a schedule award.<sup>1</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has more than a 12 percent permanent impairment of the left lower extremity for which he received a schedule award; and (2) whether he has established that he sustained additional medical conditions causally related to his accepted work injury.

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<sup>1</sup> By decision dated January 25, 2008, the Office found that appellant did not establish a recurrence of disability beginning April 2, 2007 due to his accepted December 15, 2005 work injury. Appellant has not appealed this decision and it is not before the Board in the present appeal. 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On December 15, 2005 appellant, then a 37-year-old carrier, filed a traumatic injury claim alleging that on that date he fell and twisted his left knee. The Office accepted the claim for a left knee strain and left lower leg contusion.<sup>2</sup>

In a disability certificate dated April 27, 2007, Dr. William R. Bohl, a Board-certified orthopedic surgeon, indicated that he was treating appellant for a left knee condition and that he should remain off work from April 23 through June 3, 2007. In a report dated June 1, 2007, he discussed his treatment of appellant in December 2005 and January 2006 for knee pain following his work injury. Appellant experienced knee pain in March 2007 when he climbed stairs or performed squats. Dr. Bohl related that a magnetic resonance imaging (MRI) scan of the left knee showed “full thickness chondral fissuring in the trochlea of the patellofemoral compartment.” He stated, “It would be my opinion to [a] reasonable degree of medical certainty that at the time of [appellant’s] initial injury he [had] sustained a first degree sprain of the medial collateral ligament of his left knee and that it is more likely than not that this injury caused the fissuring in the articular cartilage in the trochlea of the patellofemoral joint.”

By decision dated July 19, 2007, the Office denied appellant’s claim for compensation from April 2 through June 3, 2007 as the medical evidence was insufficient to show that he was disabled from employment due to his accepted work injury. On July 23, 2007 his attorney requested a telephonic hearing.

In a report dated August 16, 2007, received by the Office on September 4, 2007, Dr. Bohl discussed his treatment of appellant beginning December 22, 2005 and reviewed the 2007 MRI scan findings of chondral fissuring in the patellofemoral joint. He related, “The mechanism of [appellant’s] original injury was such that it could have caused this injury. I am uncertain as to whether or not this diagnosis is currently part of his allowed industrial claim.”

By decision dated January 25, 2008, an Office hearing representative affirmed the July 19, 2007 decision.<sup>3</sup> She found that the medical evidence was insufficient to establish that appellant sustained an employment-related recurrence of disability beginning April 2, 2007.

On January 25, 2008 appellant’s attorney requested that the Office issue a schedule award. He submitted a January 17, 2008 impairment evaluation from Dr. Timothy Morley, an osteopath, who described appellant’s complaints of ongoing left knee pain and weakness interfering with his ability to sit, stand, walk, climb, lift and carry and perform activities of daily living. Dr. Morley stated:

“An examination of the left leg shows 2.5 cm [centimeters] of atrophy through the left thigh when compared to the right. There is obvious weakness with force with

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<sup>2</sup> On December 19, 2005 Dr. Francis J. Yuhas, an osteopath certified by the American Osteopathic Association in family practice, diagnosed knee strain. In a December 21, 2005 progress report, she diagnosed a left knee and leg sprain and a contusion of the lower leg.

<sup>3</sup> As previously noted, appellant has not appealed this decision and it is not before the Board.

flexion. There is pain with motion. There is no noticeable instability with lateral stresses, however, with both varus and valgus stress, [appellant] does complain of medial joint space pain. There is a negative Hohman's. There is no edema. There is obvious crepitus. Extension is to [0] degrees and flexion is to 90 degrees."

Dr. Morley found that, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*), appellant had an 8 percent permanent impairment due to left thigh atrophy and a 12 percent impairment due to Grade 4 loss of strength in flexion.<sup>4</sup> He further found that 90 degrees of flexion yielded 10 percent impairment due to loss of range of motion.<sup>5</sup> Dr. Morley utilized the Combined Values Chart and determined that appellant had a 27 percent left lower extremity impairment. Appellant reached maximum medical improvement on April 27, 2007.

On February 4, 2008 an Office medical adviser reviewed Dr. Morley's report and noted that the A.M.A., *Guides* at Table 17-2 on page 526 prohibit the combination of impairments due to atrophy, decreased strength and loss of range of motion. He used the findings for loss of strength as it yielded the greatest impairment. The Office medical adviser concurred with Dr. Morley's determination that appellant reached maximum medical improvement on April 27, 2007 and concluded that appellant had a 12 percent permanent impairment of the left lower extremity. By decision dated March 20, 2008, the Office granted appellant a schedule award for a 12 percent permanent impairment of the left leg. The period of the award ran for 34.56 weeks from April 27 to December 24, 2007.

On March 26, 2008 appellant requested a telephonic hearing. At the hearing, held on July 15, 2008, counsel argued that his impairment percentage should include more than loss of strength. He also argued that the claim should be expanded to include more severe knee conditions. By decision dated September 29, 2008, the hearing representative affirmed the March 20, 2008 decision. She further found that appellant had not established that claim should be expanded to include any further accepted conditions.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Federal Employees' Compensation Act,<sup>6</sup> and its implementing regulations,<sup>7</sup> 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 for all claimants, the Office has adopted the A.M.A, *Guides* as the uniform standard applicable to all claimants.<sup>8</sup>

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<sup>4</sup> A.M.A., *Guides* 530, 532 Tables 17-6, 17-8.

<sup>5</sup> *Id.* at 537, Table 17-10.

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.* at § 10.404(a).

Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained a left knee strain and a lower leg contusion on December 15, 2005. On January 25, 2008 appellant requested a schedule award. In an impairment evaluation dated January 17, 2008, Dr. Morley noted that he experienced left knee pain and weakness performing the activities of daily living. On examination he found 2.5 centimeters atrophy of the left thigh versus the right and weakness with flexion. Dr. Morley measured range of motion of 0 degrees extension and 90 degrees flexion. He concluded that appellant had 12 percent impairment due to loss of strength in flexion according to Table 17-8 on page 532 and 8 percent impairment due to left thigh atrophy according to Table 17-6 on page 530. Dr. Morley also found 10 percent impairment due to flexion of 90 degrees under Table 17-10 on page 537. The A.M.A., *Guides*, however, does not allow all methods available to assess a lower extremity impairment to be used together for evaluating a single impairment.<sup>10</sup> The A.M.A., *Guides* provides a cross-usage chart at Table 17-2 on page 526 showing which combinations are allowed and which are prohibited.<sup>11</sup> Table 17-2 prohibits the combination of impairments due to atrophy, muscle strength and range of motion. Consequently, Dr. Morely's impairment determination does not conform to the provisions of the A.M.A., *Guides*.

On February 4, 2008 the Office medical adviser applied the provisions of the A.M.A., *Guides* to Dr. Morley's findings. He noted that Table 17-2 on page 526 of the A.M.A., *Guides* prevented combining impairments due to atrophy, decreased strength and loss of range of motion. The Office medical adviser concurred with Dr. Morley's finding that appellant had a 12 percent impairment due to loss of strength, which he properly utilized in lieu of atrophy and loss of range of motion as that provided appellant with the greatest percentage of impairment.<sup>12</sup> His report constitutes the weight of the medical evidence and establishes that he has no more than a 12 percent left lower extremity impairment.

### **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under the Act<sup>13</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition, for which compensation is claimed are causally

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<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>10</sup> A.M.A., *Guides* 525, Table 17-1.

<sup>11</sup> *Id.* at 526, Table 17-2.

<sup>12</sup> The A.M.A., *Guides* provides that, if more than one method of calculating impairment can be used, the evaluator should use the method that provides the higher impairment rating. See A.M.A., *Guides* 527, *J.C.*, 60 ECAB \_\_\_ (Docket No. 08-1833, issued March 23, 2009).

<sup>13</sup> 5 U.S.C. §§ 8101-8193.

related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

Appellant argued that he sustained more than a left knee strain and a left lower leg contusion at the time of his work injury. He bears the burden of proof to establish that any condition not accepted by the Office is causally related to the employment injury through the submission of rationalized medical evidence.<sup>15</sup>

In a report dated June 1, 2007, Dr. Bohl described his treatment of appellant in December 2005 and January 2006 for knee pain. He evaluated appellant in March 2007 after he experienced knee pain walking up stairs or performing squats. Dr. Bohl asserted that an MRI scan of the left knee showed “full thickness chondral fissuring in the trochlea of the patellofemoral compartment.” He stated, “It would be my opinion to [a] reasonable degree of medical certainty that at the time of [appellant’s] initial injury he [had] sustained a first degree sprain of the medial collateral ligament of his left knee and that it is more likely than not that this injury caused the fissuring in the articular cartilage in the trochlea of the patellofemoral joint.” Dr. Bohl, however, did not explain how the accepted work incident caused the fissuring in the articular cartilage. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant’s diagnosed medical condition.<sup>16</sup> A mere conclusion without the necessary rationale explaining how and why the physician believes that the work incident resulted in a diagnosed condition is not sufficient to meet a claimant’s burden of proof.<sup>17</sup>

On August 16, 2007 Dr. Bohl again discussed the findings of the 2007 MRI scan of a full thickness chondral fissuring in the patellofemoral joint. He related that he was “uncertain as to whether or not this diagnosis is currently part of his allowed industrial claim.” Dr. Bohl did not directly address causal relationship but instead questioned whether the diagnosis was included as part of the workers’ compensation claim. Consequently, his opinion is of little probative value.

Appellant has not submitted rationalized medical evidence supporting his claim that he sustained additional left knee conditions due to the accepted work incident and thus failed to meet his burden of proof.

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<sup>14</sup> *Caroline Thomas*, 51 ECAB 451 (2000); *Calvin E. King*, 51 ECAB 394 (2000).

<sup>15</sup> *T.M.*, 60 ECAB \_\_\_\_ (Docket No. 08-975, issued February 6, 2009); *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>16</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>17</sup> *See Beverly A. Spencer*, 55 ECAB 501 (2004); *Willa M. Frazier*, 55 ECAB 379 (2004).

**CONCLUSION**

The Board finds that appellant has no more than a 12 percent permanent impairment of the left lower extremity for which he received a schedule award. The Board further finds that he has not established that he sustained additional medical conditions causally related to his accepted work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 29 and March 20, 2008 are affirmed.

Issued: July 21, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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