

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

_____)	
R.A., Appellant)	
)	
and)	Docket No. 08-1301
)	Issued: March 5, 2009
U.S. POSTAL SERVICE, WEST MARKET)	
POST OFFICE, Philadelphia, PA, Employer)	
_____)	

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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 27, 2008 appellant, through his representative, filed a timely appeal of a March 19, 2008 merit decision of the Office of Workers' Compensation Programs finding that he was not entitled to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this case.

ISSUE

The issue is whether appellant has established permanent impairment of the lower extremities causally related to his accepted April 22, 1988 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. In decisions dated March 4, 2003, November 29, 2004, June 13, 2006 and June 13, 2007, the Board affirmed the Office's August 9 and November 20, 2001, May 24, 2004, November 25, 2005 and November 21, 2006 decisions which denied appellant's claim for a schedule award for his lower extremities. The Board found that he did not establish any permanent impairment causally related to his April 22, 1988

accepted employment-related aggravation of osteoarthritis bilateral knees.¹ In the June 13, 2007 decision, the Board found that Dr. Richard I. Zamarin, a Board-certified orthopedic surgeon, properly applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), to find that appellant sustained a 10 percent impairment of the left knee and a 20 percent impairment of the right knee. However, Dr. Zamarin failed to address whether the impairments resulted from the accepted employment-related bilateral knee injury. The facts and the circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.²

By letter dated December 24, 2007, appellant, through his representative, requested reconsideration before the Office. He submitted the December 13, 2007 report of Dr. Zamarin addressing the causal relationship between appellant's permanent impairment and the accepted condition. Dr. Zamarin reviewed the Office's statement of accepted facts and appellant's November 15, 1988 statement, which noted that his letter carrier position required carrying a mail pouch weighing up to 40 pounds and a great deal of walking for five hours per day. He also reviewed a November 15, 1988 report of Dr. Bernard H. Carlin, a Board-certified internist, and December 16, 1991 report of Dr. Marie F. Hatam, an Office referral physician, who advised that appellant's osteoarthritis was aggravated by his employment. Dr. Zamarin noted that x-rays performed on September 8, 2006 demonstrated a significant amount of osteophytes which was typical of osteoarthritis. He stated that osteoarthritis was believed to result from a complex interplay of genetic, environmental, metabolic and biochemical factors. Dr. Zamarin related that biomechanical and biochemical forces were involved in cartilage destruction which was at the core of osteoarthritis. He noted that joint trauma, long-term mechanical stress or insults such as prolonged walking while delivering mail, would further injure damaged cartilage and increase the risk of developing osteoarthritis at that anatomic site. Dr. Zamarin opined that the physiopathology of the disease together with appellant's history as a city letter carrier convinced him that, with a reasonable degree of medical certainty, there was a clear causal connection between appellant's bilateral osteoarthritis of the knees and his work duties. He concluded that any resulting permanent impairment was due, at least in part, to his occupation as a letter carrier.

By decision dated March 19, 2008, the Office denied modification of its prior decisions, denying a schedule award. It found that Dr. Zamarin's December 13, 2007 report was not sufficiently rationalized to establish that appellant sustained permanent impairment to his lower extremities causally related to his accepted aggravation of osteoarthritis.

¹ Docket No. 03-32 (issued March 4, 2003); Docket No. 04-1556 (issued November 29, 2004); Docket No. 06-395 (issued June 13, 2006); and Docket No. 07-426 (issued June 13, 2007), respectively.

² On May 31, 1991 appellant, then a 55-year-old letter carrier, filed an occupational disease claim for osteoarthritis of the weight-bearing joints in his left and right knee. By letter dated January 28, 1992, the Office accepted the claim for aggravation of osteoarthritis bilateral knees. On November 18, 1996 appellant filed a claim alleging that he sustained a recurrence of disability. By decision dated May 14, 1997, the Office denied appellant's recurrence of disability claim beginning on October 17, 1996 on the grounds that he failed to submit the necessary medical evidence to establish his claim. On February 29, 2000 appellant filed a claim for a schedule award. He retired from the employing establishment in 2001.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁵ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁶

ANALYSIS

The Office accepted appellant's claim for aggravation of osteoarthritis bilateral knees. Appellant filed a claim for a schedule award for permanent impairment of his lower extremities due to his federal employment. The Board notes that, before application of the A.M.A., *Guides*, it must review his entitlement to a schedule award by determining whether the impairment of the scheduled member is causally related to an accepted work injury.⁷ In a December 13, 2007 medical report, Dr. Zamarin stated that impairment to the right and left knees was causally related to his accepted condition. The Board, however, finds that his report does not adequately explain how appellant's employment duties caused or contributed to this condition. Dr. Zamarin reviewed the case record and advised that appellant's accepted bilateral knee condition was caused by his employment. However, Dr. Zamarin did not contrast his physical examination findings in 2006 and 2007 with findings made following the April 22, 1988 employment injury. He did not address how the accepted condition progressed or was made worse by appellant's work duties. Dr. Zamarin did not adequately explain his opinion that prolonged walking while delivering mail would further injure damaged cartilage and increase the risk of developing osteoarthritis at that joint in light of the fact that appellant had not worked since his retirement in 2001. For these reasons, his December 13, 2007 report does not establish that appellant's accepted bilateral osteoarthritis caused or contributed to permanent impairment of his knees.

CONCLUSION

The Board finds that appellant has failed to establish that he has any permanent impairment of the lower extremities causally related to his accepted April 22, 1988 employment injury.

³ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.404 (1999).

⁵ 5 U.S.C. § 8107(c)(19).

⁶ 20 C.F.R. § 10.404 (1999); *see also* *Joseph Lawrence Jr.*, 53 ECAB 331 (2002); *Tommy R. Martin*, 56 ECAB 273 (2005).

⁷ *See Veronica Williams*, 56 ECAB 367 (2005) (a schedule award can only be paid for a condition related to an employment injury).

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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