United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 08-2163**
	)	**Issued: May 14, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Guilford, CT, Employer	)	

Appearances:
Ron Watson, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 1, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 12, 2008 regarding a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a two percent permanent impairment to his left leg.

FACTUAL HISTORY

On January 31, 2005 appellant, then a 29-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left knee injury in the performance of duty on that date when he hyperextended his left knee while walking on ice. The Office accepted the claim for a sprain/strain of the left medial collateral ligament.

In a report dated February 6, 2006, Dr. Richard Diana, an orthopedic surgeon, advised that appellant underwent a partial lateral meniscectomy to repair a lateral meniscal tear. Appellant returned to a light-duty position. By report dated February 16, 2007, Dr. Diana stated that appellant had reached maximum medical improvement. He opined that under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) appellant had a seven percent "permanent partial disability of the left knee related to his meniscectomy."

The Office referred the evidence to an Office medical adviser for review. On July 10, 2007 an Office medical adviser opined that appellant had a two percent permanent impairment to his left leg under the A.M.A., *Guides* for a partial lateral meniscectomy. The date of maximum medical improvement was reported as February 16, 2007.

By decision dated July 20, 2007, the Office issued a schedule award for a two percent left leg permanent impairment. The period of the award was 40.32 days commencing February 16 to March 28, 2007.[1]

Appellant requested a hearing before an Office hearing representative, which was held on February 6, 2008. He submitted a January 15, 2008 report from Dr. Diana, who stated that the distinction in the A.M.A., *Guides* between partial and full meniscectomies was "somewhat debatable" because a partial could be 5 percent or 95 percent. Dr. Diana stated that appellant had a posterior tear, which was worse than an anterior tear, and few people had a full meniscectomy. He concluded that the impairment rating should be a continuum from two to seven percent, depending on the severity of the tear.

An Office medical adviser again reviewed the medical evidence. In a report dated March 15, 2008, he disagreed with Dr. Diana. The medical adviser opined that under the A.M.A., *Guides* the leg impairment for a partial lateral meniscectomy was two percent, while a total meniscectomy has a different rating because of the potential complication of this procedure.

By decision dated April 12, 2008, the Office reviewed the case on its merits and found that appellant did not have more than two percent impairment.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[2] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

[1] The decision reported the period of the award as 5.16 weeks, but 40.32 days is 5.76 weeks of compensation.

[2] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid additional members of the body are found at 20 C.F.R. § 10.404(a).

justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[3]

ANALYSIS

At issue in this case is the application of Table 17-33 of the A.M.A., *Guides*. On February 6, 2006 appellant underwent a partial lateral meniscectomy of the left knee. Table 17-33 provides impairment ratings for certain lower extremity impairments based on the diagnosis.[4] Under Table 17-33, a partial medial or lateral meniscectomy is two percent leg impairment. The Office medical adviser found that appellant had two percent leg impairment.

The attending orthopedic surgeon, Dr. Diana, opined that, in a February 16, 2007 report, appellant had seven percent impairment. He referred to an impairment of the left knee, but presumably he was referring to leg impairment. Under Table 17-33, a total meniscectomy is seven percent leg impairment.

On appeal, appellant's representative argues that Table 17-33 should be interpreted as providing a range of impairment from two to seven percent, depending on the severity of the meniscal tear. He cites the discussion of "diagnosis-based estimates" in the A.M.A., *Guides*, which notes that for most estimates, "the ranges of impairment are broad and the estimate will depend on the clinical manifestations and their impact on the ability to perform activities of daily living."[5] But in reviewing Table 17-33, the Board notes that the "ranges" are specifically identified. For example, there are a range of points that may be assigned to a hip or knee replacement and healed fractures have a range of degrees. The actual impairment percentage to the leg, however, is not provided as a range, but is given a specific number based on the diagnosed condition. Where the impairment is based on degrees of a healed fracture, the table provides specific instructions, such as an additional two percent leg impairment "per degree" for a displaced plateau fracture with angulations of more than 20 degrees. In no instance does Table 17-33 offer the examiner a range of impairment ratings for a specific condition.

The impairment ratings regarding meniscectomies are clearly stated in Table 17-33: partial medial or lateral meniscectomy is two percent leg impairment. There is no range of impairment rating and no indication in Table 17-33 or the accompanying discussion that establishes a range of impairment ratings based on the severity of the meniscal tear. There are certain knee conditions, such as cruciate or collateral ligament laxity, that are identified under Table 17-33 as "mild, moderate or severe" and are given a corresponding impairment rating. Table 17-33 does not provide a similar method for meniscectomies.

The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* based on the medical evidence of record. Appellant underwent a partial lateral meniscectomy and under Table 17-33 he has two percent leg impairment. Dr. Diana's opinion in his

[3] *A. George Lampo*, 45 ECAB 441 (1994).

[4] A.M.A., *Guides* 546, Table 17-33.

[5] *Id.* at 545.

January 15, 2008 report that there should be a range of ratings from two to seven percent is not supported by the A.M.A., *Guides*. The weight of the probative medical evidence does not establish more than two percent leg impairment in this case.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant's impairment was two percent, he is entitled to two percent of 288 weeks or 5.76 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.[6] In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Diana. The award therefore properly runs for 5.76 weeks commencing on February 16, 2007.

CONCLUSION

The probative medical evidence does not establish more than a two percent left leg impairment, for which appellant received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 12, 2008 is affirmed.

Issued: May 14, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[6] *Albert Valverde*, 36 ECAB 233, 237 (1984).