United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 09-144**
	)	**Issued: September 8, 2009**
U.S. POSTAL SERVICE, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 20, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decisions dated September 4 and October 9, 2008. 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 greater than a 27 percent impairment of his left lower extremity.

FACTUAL HISTORY

Appellant, a 40-year-old letter carrier, filed a Form CA-2 claim for benefits on August 13, 1997, alleging that he developed a bursitis condition in his left hip causally related to employment factors. The Office accepted the claim for aggravation of bursitis of the left hip. On May 16, 2000 appellant filed another Form CA-2 claim, alleging that he developed a left knee condition as a consequence of his accepted left hip condition. The Office accepted for aggravation of left knee internal derangement under claim no. xxxxxx922. The two claims were

combined under claim no. xxxxxx033. The Office paid compensation for temporary total disability for various periods until November 4, 2002, when appellant returned to light duty.

On October 2, 2002 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left lower extremity.

In a report dated February 17, 2003, Dr. Mark D. Avart, an osteopath, found that appellant had a 25 percent impairment of the left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition) based on weakness in the left hip abductor and flexors, in addition to pain in the trochanteric bursal area and iliotibial band.

On June 11, 2003 the Office granted appellant a schedule award for a 25 percent permanent impairment of the left lower extremity for the period January 17, 2003 to June 23, 2004, for a total of 72 weeks of compensation.

In a February 5, 2008 report, Dr. Daisy Rodriguez, Board-certified in internal medicine, rated 76 percent impairment for appellant's left lower extremity impairment. Under Tables 17-9 and 17-10 at page 537 of the A.M.A., *Guides*, she found that appellant had a total 25 percent impairment for loss of range of motion in the left hip based on the following calculations: 95 degrees hip flexion, for a five percent impairment; 20 degrees abduction, for a five percent impairment; 15 degrees adduction, for a five percent impairment; 20 degrees internal rotation, for a five percent impairment; and 30 degrees external rotation, which yielded a five percent impairment.

With regard to appellant's left knee, Dr. Rodriguez calculated 50 degrees flexion, which yielded a 37 percent loss of range of motion impairment pursuant to Tables 17-9 and 17-10 at page 537 of the A.M.A., *Guides*. She also rated a total combined 44 percent impairment for arthritis based on a one-millimeter cartilage interval in the left hip and left knee, which rendered 25 percent impairment under Table 17-31 at page 544. Lastly, Dr. Rodriquez rated seven percent impairment for chronic hip trochanteric bursitis with abnormal gait under Table 17-33 at page 546. She combined all of the calculations above under the Combined Values Chart for a total 76 percent left lower extremity impairment.

On February 27, 2008 appellant filed a Form CA-7 claim for an additional schedule award based on a partial loss of use of his left lower extremity.

In order to determine the proper degree of impairment from appellant's accepted left knee conditions, the Office referred him to Dr. Kevin F. Hanley, Board-certified in orthopedic surgery. In a report dated June 17, 2008, Dr. Hanley noted that appellant was only able to perform sedentary work and required constant use of a cane. He stated:

> "Utilizing [A.M.A., *Guides*], [appellant] can be rated a couple of different ways. If one uses the arthritis table and assumes that minimal narrowing in the knee joint is equal to three-millimeter cartilage interval and moderate narrowing in the hip is a two-millimeter cartilage interval one comes up with a 26 percent

impairment of the lower extremity utilizing the combined values table. Arthritis can be combined with the diagnosis-based estimates but there is nothing in Table 17-33 that directly applies and therefore his total impairment would 27 percent of the lower extremity. However, if one utilizes the lower limb impairment due to gait derangement on Table 17-5 which stands alone and used with no other he falls into the E category which is of moderate severity and requires a routine use of a cane, crutch or long leg brace. This is equal to a 20 percent whole person impairment which is equal to a 50 percent impairment of the extremity on the left hand side since that is the source of his need for the use of a cane. Therefore, I think that would the most appropriate way to rate him at this time on the basis of the findings we have today."

In a report dated June 27, 2008, an Office medical adviser found that appellant had a total 27 percent left lower extremity impairment pursuant to the first method outlined by Dr. Hanley, the arthritis-based radiological joint space narrowing calculation set forth at Table 17-31, page 544. He initially noted that the Office had previously awarded appellant a 25 percent left lower extremity impairment to the left lower extremity based on a Grade 4 weakness for hip abductors pursuant to the fourth edition of the A.M.A., *Guides*, which was rated identically under the updated fifth edition of the A.M.A., *Guides*. The Office medical adviser rejected Dr. Rodriguez' 76 percent left lower extremity impairment based upon decreased range of motion of the hip and knee and joint space narrowing arthritis, radiologically, of the hip and knee, stating that, under Table 17-2 at to page 526, Table 17-2, a rating based on range of motion cannot be combined with one based on arthritis. He recommended Dr. Hanley's 27 percent impairment rating for the left lower extremity based upon the arthritis radiologic joint space narrowing calculation. The Office medical adviser stated that the other option presented, based on gait derangement calculation at section 17.2c page 529, required that an impairment rating due to gait derangement be supported by pathologic findings such as x-ray and requires full time use and dependency, not assistive devices like the cane appellant used. In addition, he noted that section 17.2 stated that "*whenever possible the evaluator should use a more specific method.*" (Emphasis in original). The Office medical adviser opined that the more specific method in this case would be the one in which Dr. Hanley made radiologic findings of the hip and knee.

Based on these factors, the Office medical adviser recommended 27 percent impairment based upon radiologic findings as set forth in Table 17-31 at 544. Using Dr. Hanley's findings of a three-millimeter cartilage interval in the left knee and a two-millimeter cartilage interval in the hip joint, he derived a 7 percent impairment to the left lower extremity based on the knee and a 20 percent left lower extremity impairment for the left hip joint,[1] which produced a total 27 percent left lower extremity impairment, this represented an impairment 2 percent greater than

[1] The Office medical adviser apparently misstated the impairment for a two-millimeter cartilage interval for the hip, which is listed as 20 percent at Table 17-33. A 20 percent hip impairment and 7 percent knee impairment would combine for a 27 percent left lower extremity impairment, the rating, which he adopted, based on Dr. Hanley's findings.

the 25 percent previously awarded. He found that appellant reached maximum medical improvement on August 28, 2003.[2]

By decision dated September 4, 2008, the Office granted appellant a schedule award for an additional two percent permanent impairment of the left lower extremity for the period June 4 to July 14, 2004 for a total of five additional weeks of compensation.

By letter dated September 22, 2008, appellant's attorney requested reconsideration. Counsel argued, as he does on appeal, that the Office medical adviser erred in calculating the September 4, 2008 schedule award based on the "more specific method" set forth at section 17.2, which rendered a lower rating. He asserted that, while section 17.2 states that the more specific method should be chosen over less specific methods, it also states that the method that provides the higher rating should be adopted. Therefore, counsel contended that the Office medical adviser should have selected the other method Dr. Hanley presented in his report, which rendered a 50 percent left lower extremity impairment under Table 17-2. In addition, he argued that Chapter 1 of the A.M.A., *Guides*, the introductory chapter that sets forth the Philosophy, Purpose and Appropriate use of the A.M.A., *Guides*, states that the A.M.A., *Guides* are simply an attempt to quantify the impact of an injury upon someone's activities of daily living. Consistent with this section, therefore, combined with the final sentence in section 17.2, counsel asserted that the gait derangement method presented by Dr. Hanley was a more accurate and specific method for rating appellant's left lower extremity impairment.[3]

In a September 26, 2008 report, the Office medical adviser essentially reiterated the findings and conclusions he previously stated in his June 27, 2008 report. He noted that page 529 of section 17-2 specifically states that "*Whenever possible, the evaluator should use a more specific method than gait derangement.*" (Emphasis in original). The Office medical adviser noted that page 529 further states that gait derangement is present with many different types of lower extremity impairments and is always secondary to another condition. He stated that, although the method of gait derangement calculation would result in a higher schedule award in this case, 50 percent, this particular method is strongly discouraged by the A.M.A., *Guides* due to its lack of specificity as stated on page 529.

By decision dated October 9, 2008, the Office denied modification of the September 4, 2008 decision.

[2] The Office medical adviser noted that, in contrast with Dr. Rodriguez, Dr. Hanley found no significant loss in range of motion of the left hip and left knee on examination. Therefore, based upon Dr. Hanley's examination, appellant would not be entitled to any impairment based upon range of motion of the hip or knee pursuant to Table 17-9 and Table 17-10 at page 537 of the A.M.A., *Guides*.

[3] Counsel stated that "a rating that takes into account that [appellant] needs to use a cane to get around would seem to me to be more specific and accurate than a rating that simply quantifies various problems to various parts of his leg without encompassing the actual impact of all of these problems on his activities of daily living."

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] sets 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 loss of use.[5] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.[6] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[7]

ANALYSIS

Appellant was granted a schedule award based on 25 percent impairment to his left lower extremity. He filed a claim for an additional schedule award and submitted Dr. Rodriguez's February 5, 2008 report, which rated a 76 percent left lower extremity impairment. The Office subsequently referred him to Dr. Hanley, who presented two methods of rating his overall left lower extremity impairment: 50 percent impairment based on gait derangement at Table 17-5, page 529 and a 27 percent impairment based on radiological findings in the left knee and left hip. The Office medical adviser reviewed the evidence of record and chose Dr. Hanley's finding of a 27 percent impairment based upon specific radiological findings as indicated at Table 17-31 at page 544, *Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals*. He noted Dr. Hanley's measures of a three-millimeter cartilage interval of the left knee joint, which yields a 7 percent left lower extremity impairment at Table 17-31 and a two-millimeter cartilage interval of the left hip joint, which corresponds to a 20 percent left lower extremity impairment. Relying on the Combined Values Chart at page 604 of the A.M.A., *Guides*, the Office medical adviser found that appellant had a 27 percent left lower extremity impairment, a two percent increase over the previously awarded 25 percent left lower extremity impairment.

The Board affirms the Office's finding of 27 percent impairment for the left lower extremity, as the Office medical adviser's calculations based on Dr. Hanley's findings were proper and in accordance with the applicable protocols of the A.M.A., *Guides.* The Office medical adviser chose not to adopt Dr. Rodriguez's 76 percent impairment, as her rating based upon decreased range of motion of the hip and knee and joint space narrowing arthritis was proscribed by Table 17-2, which prohibits combining a range of motion rating with one based on arthritis.

[4] 5 U.S.C. §§ 8101-8193*; see* 5 U.S.C. § 8107(c).

[5] *Id.* at § 8107(c)(19).

[6] 20 C.F.R. § 10.404.

[7] *Veronica Williams*, 56 ECAB 367, 370 (2005).

The Office medical adviser correctly noted that the 50 percent impairment rating for gait derangement presented by Dr. Hanley was not appropriate in this case. This impairment rating by Dr. Hanley was predicated on appellant's use of a cane pursuant to Table 17-5, section (e). The Office medical adviser stated that this determination was supported by the subsection in section 17.2, at page 529, which stated that whenever possible the evaluator should use a more specific method. Relying on this subsection of the A.M.A., *Guides*, he pointed out that the more specific method in this case would be Dr. Hanley's 27 percent impairment derived from quantifiable, measurable cartilage intervals, applying Table 17-33, which was based on radiological findings of the hip and knee. The Office properly based its September 4, 2008 schedule award on the 27 percent impairment rating rendered by the Office medical adviser, who took Dr. Hanley's findings on examination and made calculations based on these findings, pursuant to the applicable standards and tables of the A.M.A., *Guides*.

Appellant's attorney requested reconsideration and argued that the Office medical adviser erred in calculating the September 4, 2008 schedule award based on the "more specific method" set forth at section 17.2, which rendered a lower impairment rating. The Office properly rejected this argument. As stated above, the Office medical adviser's determination was sufficiently well rationalized and rendered in conformance with the relevant protocols of the A.M.A., *Guides*. The Office properly found that appellant's attorney's letter did not present a basis for an additional schedule award for the left lower extremity.[8]

Accordingly, as there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Board will affirm the Office's September 4, and October 9, 2008 decisions.[9]

CONCLUSION

The Board finds that appellant has no greater than a 27 percent additional schedule award for his left lower extremity.

[8] With regard to appellant's attorney's argument that an impairment rating should be based on the effect on appellant's daily living activities, the Board notes that it has held that the amount payable under a schedule award does not take into account such factors as the effect of impairment on lifestyle activities, wage-earning capacity, sports, hobbies or other activities. *See Ruben Franco*, 54 ECAB 496 (2003).

[9] On appeal, appellant's attorney raises the identical arguments he raised before the Office. These arguments were previously rejected by the Office and were considered and rejected by the Board in the instant decision.

ORDER

IT IS HEREBY ORDERED THAT the October 9 and September 4, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: September 8, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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