United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 09-1188**
	)	**Issued: February 23, 2010**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Greensboro, NC, 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 April 1, 2009 appellant, through his attorney, filed a timely appeal of the decision of the Office of Workers' Compensation Programs dated February 26, 2009 wherein the Office denied appellant's request for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has more than a two percent impairment of his left lower extremity, for which he received a schedule award.

Appellant, through his attorney, asked the Board to consider a greater impairment based on the opinion of Dr. Mark Rowley, a Board-certified orthopedic surgeon, as well as the other medical evidence of record.

FACTUAL HISTORY

On October 15, 1999 appellant, then a 34-year-old mail handler/forklift operator, filed a traumatic injury claim alleging that on October 2, 1999 his left foot slipped from its position

while he was positioning the forklift to push boxes and that his foot got caught between the boxes and the forklift. He noted that, as a result of this incident, he sprained his left ankle and sustained a contusion to his left knee. The Office accepted appellant's claim for left knee and left ankle strains and a torn left medial meniscus. On May 4, 2000 appellant underwent an arthroscopy of the left knee with full evaluation and debridgement of synovial capsular tissue above the medial compartment and a partial very anterior tear of the meniscus medial. On July 24, 2003 the Office issued a schedule award for a two percent impairment of the left leg.

On January 26, 2009 appellant filed a claim for an increased schedule award. In support of his claim for an increased schedule award, he submitted a January 12, 2009 report by Dr. Rowley, who reported, among other things, that appellant had chronic left knee pain after prior partial meniscectomy. He opined that, based on diagnosis-based estimates of prior partial meniscectomy from Table 17-33, page 547 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), appellant was entitled to a permanent impairment rating of two percent of the lower extremity.

By memorandum dated February 23, 2009, the Office referred appellant's case to the Office medical adviser for a determination as to whether appellant was entitled to a greater schedule award greater than a two percent impairment to the left lower extremity.[1] In a memorandum dated February 23, 2009, the Office medical adviser agreed that appellant had a two percent impairment of his left lower extremity based on impairment to his knee based on Table 17-33 of the A.M.A., *Guides.*[2]

By decision dated February 26, 2009, the Office noted that appellant had previously been paid a schedule award for two percent of the left lower extremity (knee). It concluded that the medical evidence did not support an increase in the impairment already compensated.[3]

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulations[5] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of schedule 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 to all claimants, the

[1] The Office indicated that appellant had a previous schedule award based on a seven percent impairment to the left lower extremity based on a foot injury. This is also referred to by the Office medical adviser and is noted in the February 26, 2009 decision. The Board is unable to locate anything in the record that confirms that appellant received any such award based on a foot impairment.

[2] The Office medical adviser mistakenly refers to an impartial medical examiner's report dated January 12, 2009. However, it is clear that he is actually referring to the report of appellant's physician, Dr. Rowley.

[3] The Office noted that appellant previously received a schedule award for a seven percent impairment of the left lower extremity, specifically, the left foot/ankle.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[7]

ANALYSIS

In the instant case, the Office accepted appellant's claim for left knee and left ankle strains and a torn left medial meniscus. It previously issued a schedule award based on a two percent impairment of appellant's left lower extremity. Appellant requested an increased schedule award based on the opinion of Dr. Rowley and other unspecified evidence. However, the Board finds that no medical evidence in the record establishes that appellant is entitled to a schedule award for greater than a two percent impairment of the left leg. Dr. Rowley determined that appellant was entitled to a schedule award for impairment to his left lower extremity of two percent based on Table 17-33 of the A.M.A., *Guides*. The Office medical adviser agreed. However, appellant already received a schedule award in this amount by decision dated July 24, 2003. Thus, the Board finds that the record does not establish that appellant is entitled to a greater award.

CONCLUSION

The Board finds that appellant has not established that he is entitled to more than a two percent impairment of his left lower extremity, for which he received a schedule award.

[6] *Id*. at § 10.404(a).

[7] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 26, 2009 is affirmed.

Issued: February 23, 2010
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