United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 09-290**
	)	**Issued: January 28, 2010**
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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 10, 2008 appellant, through counsel, filed a timely appeal from two October 22, 2008 decisions of the Office of Workers' Compensation Programs that affirmed the termination of her compensation benefits and denied a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits on May 21, 2008; and (2) whether appellant established that he has more than seven percent impairment to his left lower extremity.

FACTUAL HISTORY

On April 17, 2006 appellant, then a 57-year-old letter carrier, sustained injury to his left knee. He stopped work on May 3, 2006.[1] The Office accepted his claim for left knee sprain, aggravation of preexisting degenerative arthritis, strains of the medial and lateral collateral ligaments and tear of the medial collateral ligament.

In a December 4, 2006 report, Dr. Brian J. Sennett, an attending Board-certified orthopedic surgeon, noted that appellant could perform sedentary work with no stair climbing. He examined the left knee and found no significant medial or lateral joint line tenderness but there was patellofemoral crepitance with pain localized over the anterior aspect of the knee. Dr. Sennett found no instability with varus or valgus stress, a full range of motion and normal strength. He diagnosed patellofemoral arthritis with asymptomatic meniscal tears.

Appellant returned to full-time limited duty on December 9, 2006. He sustained intermittent disability from January 19 to April 13, 2007. On March 7, 2007 appellant was offered a modified letter carrier position. He rejected the job offer asserting that it was outside his medical restrictions.

On May 7, 2007 the Office referred appellant for a second opinion to Dr. Robert Draper, a Board-certified orthopedic surgeon. It requested an opinion regarding his preexisting knee condition and whether it contributed to his present diagnosis and disability.

In a May 10, 2007 duty status report, Dr. David Allen, a treating physician specializing in occupational medicine, noted restrictions on continuous lifting, more than 10 pounds of intermittent lifting and no more than 30 minutes continuous standing and walking.

On May 23, 2007 Dr. Draper described appellant's history and treatment. Left knee examination revealed minimal crepitus, full extension, 120 degrees of flexion and no instability. Dr. Draper diagnosed preexisting left knee osteoarthritis, a degenerative tear of the medial meniscus, a large complex tear of the lateral meniscus associated with osteoarthritis, a partial tear and tendinopathy of the patella tendon with mild osteoarthritis of the patellofemoral articulation and a mild sprain of the medial collateral ligament and medial patella retinaculum. He explained that 75 percent of appellant's complaints and pathology were related to the preexisting osteoarthritis of the left knee and 25 percent was associated with the work injury, which led to a permanent aggravation. Dr. Draper advised that appellant could perform full-time work in a job that did not require him to climb ladders, stand or walk excessively or lift more than 60 pounds. He noted that no further treatment was needed and that appellant had reached maximum medical improvement.

[1] Appellant sustained injury to his left knee on February 21, 1999 accepted for a sprain and tear of the left medial meniscus. He received a schedule award for seven percent impairment of the left leg on November 28, 2001. The record reflects that appellant worked a sedentary limited-duty position since September 2000 due to his preexisting left knee condition. Appellant also has two claims for post-traumatic stress disorder that are not presently before the Board.

On June 14, 2007 Dr. Allen completed an impairment rating for appellant. He noted that appellant had left knee effusion and pain when walking and sleeping, occasional numbness, decreased muscle strength and slight atrophy. Dr. Allen rated appellant's pain as 80 out of 100 and advised that he could not walk up or down stairs. His range of motion findings included flexion of 125 to 145 degrees and extension of 0 to -5 degrees. Dr. Allen opined that appellant had 40 percent impairment of the leg and had reached maximum medical improvement. In a June 22, 2007 duty status report, he advised that appellant could perform limited duty with restrictions comprised of 10 pounds continuous lifting, 60 pounds intermittent, with a total of four hours related to standing and walking per day. On July 3, 2007 Dr. Sennett noted that appellant had a full range of left knee motion. He noted anterior pain in the patellofemoral region and diminished strength in the quadriceps secondary to pain. Dr. Sennett diagnosed degenerative arthritis with asymptomatic meniscal tears.

Appellant returned to limited duty full time in a modified assignment on July 16, 2007.

In a September 25, 2007 report, an Office medical adviser reviewed the medical evidence under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He noted that the only significant impairment that he could derive from Dr. Allen's report was for loss of left knee extension. While he noted that the range of motion findings included a finding of -5 degrees, which would correlate to 10 percent leg impairment. However, Dr. Draper had found normal extension range of motion on examination. The medical adviser recommended that appellant be referred for a second opinion evaluation.

On December 21, 2007 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Steven J. Valentino, a Board-certified orthopedic surgeon, who was asked to address appellant's current medical status and whether there was ratable permanent impairment.

In a January 30, 2008 report, Dr. Valentino reviewed appellant's history of injury and medical treatment. On examination, appellant walked normally and had a full range of motion about the hips, knees, ankles and feet. Motor and sensory examination was normal. For left knee range of motion, appellant had extension of 0 degrees, flexion of 145 degrees, internal rotation of 10 degrees and external rotation of 10 degrees. He had mild crepitus throughout range of motion, which was remarkable bilaterally. Dr. Valentino concluded that appellant's aggravation of preexisting arthritis of the left knee and sprain of the left knee had resolved. He opined that appellant had fully recovered from his work injury although he continued to have preexisting arthritis of the left knee. Regarding impairment, Dr. Valentino indicated that appellant had no impairment of the left leg as he had full recovery from aggravation of degenerative arthritis and has fully recovered from the strain. He characterized the examination as normal and noted that it was supported by the evaluation of Dr. Sennett on July 3, 2007. Dr. Valentino advised that appellant did not have any evidence of ankylosis, no evidence of loss of motion and no record of joint space loss that could be apportioned to the April 17, 2006 injury. He opined that appellant had returned back to baseline. Dr. Valentino stated that appellant was limited to a light to medium-duty job given his age and the preexisting degenerative changes. No work restrictions, however, were apportioned to the April 17, 2006 work injury.

By decision dated February 25, 2008, the Office denied appellant's claim for a schedule award. It found that the evidence was insufficient to establish that he sustained permanent impairment to a scheduled member due to his accepted work injury.

In a letter dated March 4, 2008, appellant contended that all his accepted left knee conditions were not properly taken into account. On March 12, 2008 the Office amended the statement of accepted facts to include all of his accepted conditions and wrote to Dr. Valentino. It requested that Dr. Valentino review the amended statement and provide a supplemental opinion related to his findings.

In an April 1, 2008 note, Dr. Valentino stated that he had reviewed the additional documentation but that his opinion had not changed. He opined that appellant was at his "preinjury level when [he] examined him on January 30, 2008."

In an April 14, 2008 decision, the Office found that appellant did not sustain ratable impairment due to his April 17, 2006 work injury.

On April 15, 2008 the Office proposed to terminate appellant's compensation benefits based on the opinion of Dr. Valentino. Appellant was given 30 days to submit additional evidence or argument.

On April 21, 2008 appellant reiterated that not all of his left knee conditions were taken into consideration. In particular, he noted that the Office medical adviser opined that he was entitled to 10 percent impairment. On April 30, 2008 appellant requested a telephone hearing regarding the schedule award issue that was held on August 11, 2008.

By decision dated May 21, 2008, the Office terminated compensation benefits effective May 21, 2008. It found that Dr. Valentino represented the weight of the medical evidence.

On May 23, 2008 appellant requested a telephone hearing, which was held on August 11, 2008. On July 31, 2008 his application for disability retirement was approved.

By decision dated October 22, 2008, the Office hearing representative affirmed the April 14, 2008 schedule award decision. In a separate decision also dated October 22, 2008, the Office affirmed the May 21, 2008 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[3] Furthermore, the right to medical

[2] *Lawrence D. Price,* 47 ECAB 120 (1995).

[3] *Id.; see Patricia A. Keller,* 45 ECAB 278 (1993).

benefits for an accepted condition is not limited to the period of entitlement for disability.[4] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[5]

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.[6]

ANALYSIS -- ISSUE 1

The record reflects that appellant sustained injury on February 21, 1999 to his left knee. This claim was accepted for a left knee sprain and tear of the medial meniscus for which he underwent arthroscopic surgery. Appellant received a schedule award in 2001 for seven percent impairment of his left leg. He sustained another left knee injury on April 17, 2006, accepted for an aggravation of his preexisting degenerative osteoarthritis, strains of the medial and lateral collateral ligaments and a tear of the medial collateral ligament. Appellant was treated by Dr. Sennett and Dr. Allen, both of whom advised that he had physical limitations arising from his accepted left knee conditions.

Appellant was referred to Dr. Draper, who provided findings on examination of the left knee. Dr Draper noted preexisting left knee osteoarthritis, degenerative tears of the medial meniscus, a large complex tear of the lateral meniscus, a partial tear of the patella tendon associated with arthritis and sprain of the medial collateral ligament. He attributed appellant's left knee condition to his employment injuries, apportioning 75 percent to the preexisting osteoarthritis and 25 percent to the April 2006 injury, which he advised caused a permanent aggravation. Dr. Draper found that appellant could work within specified physical limitations.

The Office terminated appellant's compensation wage-loss and medical benefits for his left knee condition based on the report of Dr. Valentino. The Board finds, however, that the reports of Dr. Valentino are not well rationalized in explaining how appellant's left knee condition had resolved without residual disability. On January 30, 2008 Dr. Valentino provided finding on range of motion and diagnosed resolved aggravation of preexisting arthritis of the left knee and resolved left knee sprain. The Board notes, however, that appellant's left knee injuries have been accepted for conditions that were not addressed by Dr. Valentino in the January 30, 2008 report. Dr. Valentino agreed that appellant had preexisting arthritis about the left knee, but then stated that he had fully recovered from the aggravation of degenerative arthritis and fully recovered from the accepted strain. He did not provide any further explanation for the basis of his conclusion. In addressing the extent of arthritis, Dr. Valentino noted that there was no joint

[4] *Furman G. Peake,* 41 ECAB 361, 364 (1990).

[5] *Id.*

[6] *See Connie Johns,* 44 ECAB 560 (1993).

space loss that could be apportioned to the April 17, 2006 injury. There was no discussion of the 1999 injury or how it contributed to the arthritis found on examination. Dr. Valentino's opinion on causal relationship is, at best, vague.

The Office submitted an amended statement of accepted facts to Dr. Valentino and requested that he clarify his opinion. Dr. Valentino returned a brief note on April 1, 2008, stating that he had reviewed the statement of accepted facts and that his opinion was not changed. He stated only that appellant was at his preinjury level when examined on January 30, 2008. As noted, Dr. Valentino's original report is vague on the issue of causal relation and in explaining how all residuals of appellant's accepted injuries had resolved as of the date of his examination. The brief note of clarification is not sufficiently well rationalized to support the termination of appellant's compensation benefits for his accepted left knee conditions. The Board will reverse the October 22, 2008 decision affirming the termination.

LEGAL PRECEDENT -- ISSUE 2

Section 8107 of the Federal Employees' Compensation Act[7] set forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[8] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[9] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[10]

ANALYSIS -- ISSUE 2

The record reveals that, following injury in 1999, appellant received a schedule award for seven percent impairment of his left leg. The issue is whether he has established greater impairment due to his 2006 injury. The Board finds that the case is not in posture for decision.

In support of his request for a schedule award, appellant submitted the June 14, 2007 report of Dr. Allen, who rated impairment as 40 percent. Dr. Allen advised that appellant had reached maximum medical improvement and note loss of extension of the left knee. However, he failed to explain how he arrived at his conclusion. For example, Dr. Allen did not refer to any tables in the A.M.A., *Guides* to support his rating. It is well established that when an attending physician's report gives an estimate of impairment but does not address how the estimate is based upon the A.M.A., *Guides*, the rating is of reduced probative value. The Office may follow the advice of its medical adviser or consultant.[11]

[7] 5 U.S.C. §§ 8101-8193.

[8] 5 U.S.C. § 8107.

[9] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[10] 20 C.F.R. § 10.404.

[11] *J.Q.*, 59 ECAB ___ (Docket No. 06-2152, issued March 5, 2008); *Laura Heyen*, 57 ECAB 435 (2006).

In a September 25, 2007 report, the Office medical adviser reviewed the report of Dr. Allen.[12] He noted the -5 degree finding for loss of left knee extension would correlate to impairment of 10 percent. However, the Office medical adviser questioned this measurement in light of Dr. Draper's May 23, 2007 report, which found normal extension. He recommended that appellant be referred for a second opinion.

The Office denied appellant's claim for an additional schedule award based on the January 30, 2008 report of Dr. Valentino, who found that appellant had full range of motion about the hips, knees, ankles and feet. Dr. Valentino stated that there was no evidence of ankylosis, loss of motion and no record of joint space loss that could be apportioned to the April 17, 2006 injury. His findings for range of motion included extension of 0 degrees, flexion of 145 degrees, internal rotation of 10 degrees and external rotation of 10 degrees. Dr. Valentino found mild crepitus bilaterally. He estimated appellant's permanent impairment as 0 percent, again stating that appellant had fully recovered from the accepted aggravation of arthritis to the left knee. Again, the Board notes that the conclusions reached by Dr. Valentino are not well rationalized. It is well established that in determining impairment under a schedule award, preexisting impairment of the scheduled member is to be taken into consideration.[13]

Dr. Valentino determined that appellant was not entitled to an impairment rating as he had full recovery from the accepted aggravation of degenerative arthritis and the accepted left knee strain. He noted, however, that appellant had preexisting arthritis about the left knee. Dr. Valentino's report erroneously apportioned between the April 17, 2006 injury and any preexisting impairment.[14] The Office requested clarification from Dr. Valentino on March 12, 2008 and provided him with the updated statement of accepted facts. As noted, however, Dr. Valentino briefly mentioned that he reviewed the additional documentation; however, he had not changed his mind. He opined that appellant was at a "preinjury level" when examined on January 30, 2008. Dr. Valentino's additional report does not cure the deficiencies noted in the narrative report. The Board will set aside the October 22, 2008 decision affirming the denial of an additional schedule award.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits for his accepted left knee conditions. The Board also finds that the case is not in posture for decision on the extent of permanent impairment to appellant's left leg.

[12] *Id.*

[13] *See Carol A. Smart*, 57 ECAB 340 (2006).

[14] *See Juanita L. Spencer*, 56 ECAB 611 (2005); *Dale B. Larson*, 41 ECAB 481 (1990).

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2008 decision of the Office of Workers' Compensation Programs affirming the termination of appellant's compensation benefits be reversed. The October 22, 2008 Office decision denying any additional schedule award is set aside. The case is remanded to the Office for further action in conformance with this decision.

Issued: January 28, 2010
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