United States Department of Labor
Employees' Compensation Appeals Board

I.C., Appellant	)	
	)	**Docket No. 09-1257**
and	)	**Issued: January 12, 2010**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, BORDER PATROL TUCSON SECTOR, Tucson, NM, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 16, 2009 appellant filed a timely appeal of a March 25, 2009 merit decision of the Office of Workers' Compensation Programs which found that he had no more than seven percent permanent impairment of the left leg for which he received a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether the Office properly determined that appellant had no more than seven percent permanent impairment of the left lower extremity for which he received a schedule award.

FACTUAL HISTORY

On November 27, 2007 appellant, then a 35-year-old border patrol trainee, filed a claim alleging that on November 21, 2007 he injured his left knee during defensive tactics training.

The Office accepted appellant's claim for tear of the medial meniscus of the left knee and sprain of the left lateral collateral ligament and authorized arthroscopic surgery which was performed on January 4, 2008. Appellant stopped work on December 6, 2007 and returned to full-time limited duty on October 17, 2008. Appropriate compensation benefits were paid.

Appellant was treated by Dr. Roger Hill, Board-certified in emergency medicine, from November 21 to 29, 2007, for a left knee injury which occurred while at work. Dr. Hill diagnosed left knee sprain, rule out meniscal tear. On November 29, 2007 appellant underwent a magnetic resonance imaging (MRI) scan of the left knee which revealed a tiny tear in the posterior horn of the medial meniscus, high-grade tear through the mid-fibers of the anterior cruciate ligament, large knee joint effusion, prepatellar bursitis and deep intrapatellar bursitis. Appellant sought treatment from Dr. Scott V. Slagis, a Board-certified orthopedist, from December 6, 2007 to January 3, 2008, who diagnosed anterior cruciate ligament tear and meniscus tear and recommended surgery. On January 4, 2008 Dr. Slagis performed a left knee anterior cruciate ligament reconstruction using tibia anterior allograft and diagnosed anterior cruciate ligament tear. He noted in reports dated January 17 to March 13, 2008 that appellant was progressing well postoperatively and could return to work limited duty on January 17, 2008.

On April 23, 2008 the Office referred appellant for a second opinion to Dr. Jon T. Abbott, a Board-certified orthopedist, for a determination of whether appellant has residuals of his accepted conditions and whether he had permanent impairment attributable to his accepted conditions.

In a May 13, 2008 report, Dr. Abbott noted a history of appellant's work-related condition and treatment. He noted examination findings of the left knee of normal gait, positive Lachman test, healed arthroscopic portals, no joint line or patellar tenderness, sensory examination was intact, no visible atrophy and the motor examination was normal in all motor groups. Dr. Abbott diagnosed torn anterior cruciate ligament of the left knee, status post reconstruction surgery. He noted minimal lack of terminal extension on examination and mild residual laxity to Lachman testing without a pivot shift. Dr. Abbott noted that there was no evidence of symptomatic instability or pivot shift and opined that the left knee reconstruction was stable. He recommended continued physical therapy and advised that appellant could return to modified duties at work subject to restrictions.

Appellant continued to submit reports from Dr. Slagis dated May 16 to December 6, 2008 who noted appellant was progressing well with no instability in the left knee. Dr. Slagis anticipated appellant reaching maximum medical improvement in three months. In an October 9, 2008 report and a November 20, 2008 attending physician's report, he advised that appellant reached maximum medical improvement and could return to work without restrictions. Dr. Slagis advised that appellant's knee was stable with no abnormalities. He opined that pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[1] (A.M.A., *Guides*) appellant had 17 percent permanent impairment due to his anterior cruciate ligament tear.

On November 24, 2008 appellant filed a claim for a schedule award.

[1] A.M.A., *Guides* (5th ed. 2001).

On February 19, 2009 appellant's case record was referred to an Office medical adviser, who noted in a report dated February 27, 2009 that in accordance with A.M.A., *Guides* appellant sustained a seven percent impairment of the left lower extremity.[2] The medical adviser referenced the May 13, 2008 report from Dr. Abbott who noted findings of residual laxity and mild residual laxity to Lachman testing. He also noted that Dr. Slagis' recent reports indicated that the knee was stable. The medical adviser opined that, in accordance with Table 17-33 of the A.M.A., *Guides,* appellant had a stable anterior cruciate ligament reconstruction. He noted that the postoperative notes did not indicate moderate or severe cruciate ligament instability. Therefore, the medical adviser opined that the Office referrals findings of mild residual laxity would equate to seven percent impairment of the left leg. He noted that Dr. Slagis recommended 17 percent impairment for moderate cruciate laxity; however, this finding was not supported by the medical record. The medical adviser noted that maximum medical improvement was reached on October 9, 2008.

On March 25, 2009 the Office granted appellant a schedule award for seven percent permanent impairment of the left lower extremity. The period of the award was from October 9, 2008 to February 27, 2009.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled 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, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5]

ANALYSIS

Appellant asserts that he is entitled to 17 percent permanent impairment of the left lower extremity in accordance with Dr. Slagis' opinion. The Office accepted appellant's claim for tear of the medial meniscus of the left knee and sprain of the left lateral collateral ligament and authorized arthroscopic surgery which was performed on January 4, 2008.

The Board has carefully reviewed Dr. Slagis' reports and notes that he did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.[6] In reports dated October 9 and November 20, 2008, Dr. Slagis determined that

[2] *Id.* at 546-47, Table 17-33.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *See id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[6] *See Tonya R. Bell,* 43 ECAB 845, 849 (1992).

appellant sustained 17 percent permanent impairment due to an anterior cruciate ligament tear. While he referenced the A.M.A., *Guides*, he did not provide his reasoning or calculations in support of this impairment determination. For example, Dr. Slagis did not cite to tables or charts in the A.M.A., *Guides* to support his impairment rating and failed to provide findings upon physical examination for cruciate ligament laxity to support 17 percent impairment rating. Therefore the Board finds that Dr. Slagis did not properly follow the A.M.A., *Guides*. An attending physician's report is of little probative value where the A.M.A., *Guides*, are not properly followed.[7]

In a February 27, 2009 report, the medical adviser properly applied the A.M.A., *Guides*, to the medical evidence of record and found that appellant had impairment of seven percent of the left lower extremity in accordance with Table 17-33 of the A.M.A., *Guides*.[8] He referenced a May 13, 2008 report from Dr. Abbott who noted findings of residual laxity and mild residual laxity to Lachman testing. He also noted that Dr. Slagis' recent reports stated that the knee was stable. The medical adviser opined that, in accordance with Table 17-33 of the A.M.A., *Guides*, appellant had a stable anterior cruciate ligament reconstruction. He indicated that postoperative notes did not reveal findings of moderate or severe cruciate ligament instability and opined that Dr. Abbott's findings of mild residual laxity and Dr. Slagis' recent reports supported mild laxity only and a seven percent impairment of the left lower extremity. Although the medical adviser noted that Dr. Slagis recommended 17 percent impairment, which equates to moderate cruciate laxity, he opined that such a finding was not substantiated by the medical record. The medical adviser noted maximum medical improvement was reached on October 9, 2008. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than seven percent impairment of the left lower extremity.

The Board finds that, under the A.M.A., *Guides*, appellant has no more than seven percent permanent impairment of the left lower extremity.

On appeal, appellant asserts that he was entitled to 17 percent permanent impairment of the left leg pursuant to Dr. Slagis' evaluation. As noted above, however, Dr. Slagis, in reports dated October 9 and November 20, 2008, failed to explain pursuant to the A.M.A., *Guides* how he determined this degree of impairment. This failure to explain how the impairment was determined pursuant to the A.M.A., *Guides* is particularly important since these reports also found the knee to be stable with no abnormalities.

CONCLUSION

The Board finds that the Office properly determined that appellant had no more than seven percent permanent impairment of the left leg for which he received a schedule award.

[7] *See Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

[8] *See supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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