United States Department of Labor
Employees' Compensation Appeals Board

A.K., Appellant	)	
and	)	**Docket No. 09-1328**
	)	**Issued: January 11, 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:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 27, 2009 appellant filed a timely appeal from the April 15, 2009 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment of his left lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On March 4, 2002 appellant, then a 53-year-old mail handler, filed an occupational disease claim alleging a left knee condition arising in the performance of duty. He first became aware of his condition and its relation to his work on February 10, 2002. Appellant stopped work on February 13, 2002. Initial medical reports diagnosed arthritic swelling of the left knee secondary to repeated trauma and noted decreased range of motion. The Office accepted appellant's claim for aggravation of osteoarthritis of the left knee. Appellant received wage-loss compensation benefits. He subsequently filed a claim for a schedule award.

In a report dated February 19, 2009, Dr. Nicholas Diamond, a Board-certified osteopath and treating physician, reviewed appellant's history of injury and treatment. He rated impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001), hereinafter A.M.A., *Guides.* Regarding appellant's activities of daily living, Dr. Diamond noted difficulty with household chores, mowing the lawn and personal hygiene. He determined that appellant could stand comfortably for 10 minutes, but had difficulty with walking one block and used a cane or walker for ambulation. Dr. Diamond also advised that appellant had difficulty with climbing stairs, driving and could no longer kneel, squat, bowl, or play basketball or tennis. On examination, he reported that appellant had effusion and peripatellar tenderness over the medial joint line and medial joint space and medial femoral condyle, the lateral joint line, lateral joint space and lateral femoral condyle. Dr. Diamond also indicated that appellant had crepitance in both the medial and lateral joint compartment. He advised that manual muscle strength testing of the lower extremities revealed the gastrocnemius and quadriceps warranted a grade of 4/5 on the left. Dr. Diamond indicated that the circumference of the gastrocnemius was 40 centimeters on the right versus 38.5 centimeters on the left. He measured the quadriceps and advised that the circumference was 51.5 centimeters on the right versus 52 centimeters on the left. Dr. Diamond diagnosed cumulative and repetitive trauma disorder, degenerative joint disease to the left knee and severe osteoarthritis to the left knee. Regarding range of motion, he determined that appellant had flexion-extension of 0 to 95 degrees. Dr. Diamond referred to Table 17-10 and opined that flexion of less than 110 degrees would result in 10 percent impairment.[1] He also referred to Figure 18-1[2] and rated pain-related impairment of 3 percent or a total impairment of 13 percent to the left lower extremity. Dr. Diamond opined that appellant reached maximum medical improvement on February 19, 2009.

On April 4, 2009 Dr. Arnold T. Berman, an Office medical adviser, reviewed Dr. Diamond's February 19, 2009 report and the A.M.A., *Guides.* He noted that appellant had decreased range of motion but did not undergo surgery. The left knee range of motion measurements provided by Dr. Diamond, the only ratable loss was flexion to 95 degrees. Dr. Diamond referred to Table 17-10 which provides that a range of motion of less than 110 degrees is 10 percent impairment to the lower extremity. The Office medical adviser noted that Dr. Diamond had also provided an additional three percent impairment for pain, but explained that section 18.3a of the A.M.A., *Guides* provides that a pain-related impairment can be rated when there is excess pain in the context of a verifiable medical condition that causes pain well-established pain syndromes without significant identifiable organ dysfunction to explain the pain and when there are other associated pain syndromes.[3] Under section 18.3(b) of the A.M.A., *Guides*, "examiners should not use this chapter to rate pain[-]related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the guides."[4] The Office medical adviser found that appellant's clinical picture did not warrant the additional three percent pain award. He concluded that

[1] A.M.A., *Guides* 537.

[2] *Id*. at 574.

[3] *Id.* at 570.

[4] *Id.* at 571, section 18.3b.

appellant had 10 percent impairment of the left lower extremity. The Office medical adviser opined that appellant was at maximum medical improvement on February 19, 2009.

On April 15, 2009 the Office granted appellant a schedule award for 10 percent permanent impairment of the left lower extremity. The award covered a period of 28.80 weeks from February 19 to September 8, 2009.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[5] sets 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.[6] 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.[7] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[8]

ANALYSIS

The Board notes that Dr. Diamond and the Office medical adviser were in agreement that appellant has 10 percent impairment of the left lower extremity due to loss of range of motion. Dr. Diamond found on examination that appellant had left knee flexion of 95 degrees. The Board notes that Table 17-10[9] of the A.M.A., *Guides* provides flexion-extension of 95 degrees is 10 percent impairment to the left lower extremity.

Dr. Diamond also rated an additional three percent for pain-related impairment based on Figure 18-1,[10] however, the Office medical adviser properly noted that Dr. Diamond did not explain how the additional three percent conformed to the protocols set out in section 18.3a[11] The textual material at section 18.3(b) of the A.M.A., *Guides,* provides that examiners should not use this chapter to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.[12] Office procedures and Board precedent provide that Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain.[13] The examining

[5] 5 U.S.C. §§ 8101-8193.

[6] *Id*. at § 8107.

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

[8] 20 C.F.R. § 10.404.

[9] A.M.A., *Guides* 537.

[10] *Id.* at 574, Figure 18-1.

[11] *Id.* at 570.

[12] *See supra* note 4.

[13] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); *Philip A. Norulak***,** 55 ECAB 690 (2004).

physician is to provide a written explanation to support the application of Chapter 18 when the other rating protocols cannot be applied. Dr. Diamond did not do so in this case.

On appeal, appellant's representative argues that appellant should receive impairment for his pain and the measurements for the calf muscle. As noted, Dr. Diamond did not explain how the additional three percent impairment rating conformed to the A.M.A., *Guides*. He also did not rate impairment under the A.M.A., *Guides*, other than for loss of knee flexion under Table 17-10 and pain-related impairment under Chapter 18 of the A.M.A., *Guides*. In Table 17-2 of the A.M.A., *Guides*, the cross-usage chart provides that it is not appropriate to combine range-of-motion impairment with diagnosis-based estimates, atrophy and loss of muscle strength.[14] Thus, appellant would not be entitled to additional impairment for atrophy in the circumstance presented here as his impairment was based on loss of range of motion.

CONCLUSION

The Board finds that appellant has not established that he has more than 10 percent permanent impairment of his left lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2009 is affirmed.

Issued: January 11, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[14] A.M.A., *Guides* 526.