United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 09-1929**
	)	**Issued: July 22, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

Appearances:
Appellant, pro se
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 July 22, 2009 appellant filed a timely appeal from a June 24, 2008 schedule award decision of the Office of Workers' Compensation Programs. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUE

The issue is whether appellant has more than 50 percent impairment of his left leg and 41 percent impairment of the right leg, for which he received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board. Appellant, then a 37-year-old clerk, injured his left knee on March 23, 1989. The Office accepted a claim for fractured left tibia. By

[1] For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

decision dated July 13, 1992, it granted appellant a schedule award for a 28 percent impairment of the left leg. The period of the award ran from January 31, 1992 to August 17, 1993 or a total of 80.64 weeks of compensation. By decision dated April 6, 2001, the Office found that appellant had 50 percent impairment of the left leg and a 41 percent impairment of the right leg. In a July 2, 2002 decision,[2] the Board affirmed the Office's April 6, 2001 decision.

On June 26, 2007 appellant underwent a total right knee arthroplasty with femoral, tibia and patella replacement. The surgery was performed by Dr. John J. Larkin, Board-certified in orthopedic surgery. On October 3, 2007 appellant filed a claim for an additional schedule award for loss of use of his right lower extremity.

In a March 20, 2008 report, Dr. Larkin stated that appellant was doing extremely well since his right knee replacement surgery. Appellant experienced some difficulty and developed arthrofibrosis, which required manipulation. Dr. Larkin stated that appellant had regained a functional range of motion and was relatively pain free. He opined that appellant did not have any current, ongoing residual symptomatology, was functional and had reached maximum medical improvement based on the excellent result he achieved.

Dr. Larkin found that appellant had a 37 percent impairment to the right lower extremity based on active flexion of 120 degrees and retained extension of 0 degrees pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). He advised that there was no additional impairment of function due to weakness, atrophy, pain or discomfort.

In a May 16, 2008 report, an Office medical adviser agreed with Dr. Larsen, that appellant had a 37 percent right lower extremity impairment. Therefore, the medical evidence did not establish more than the 41 percent impairment previously awarded.

On June 16, 2008 Dr. Larkin reiterated that the 37 percent right lower extremity impairment rating was based on range of motion and was not an additional functional impairment due to weakness, atrophy or pain.

In a June 24, 2008 decision, the Office found that appellant was not entitled to an additional schedule award for the right lower extremity.

In a July 11, 2008 report, Dr. James W. Templin, Board-certified in occupational medicine, found that appellant had a 50 percent impairment of his right lower extremity based on a fair result from his June 26, 2006 total right knee replacement surgery, pursuant to Tables 17-35 and 17-33 of the A.M.A., *Guides*. He noted that appellant had surgery in June 2007 and underwent manipulation of the right knee in August 2007, which rendered a significant improvement in his condition. Dr. Templin stated that appellant was able to return to work in September 2007 and had been able to perform his functional duties. He noted full extension of both knees with no instability on examination; however, appellant showed tenderness with swelling of the right knee on examination. Dr. Templin related that appellant complained of a

[2] Docket No. 01-1850 (issued July 2, 2002).

constant pain in his right knee, which increased with prolonged standing, walking, bending, stooping, crouching, squatting, kneeling and climbing activities.

Dr. Templin noted that appellant had previously been awarded a 50 percent impairment rating for his total left knee replacement. Given the prior impairment to the lower extremity, Dr. Templin rated 75 percent total combined impairment to the lower extremities based on a 50 percent impairment for the right lower extremity and 50 percent impairment for the left lower extremity.

On July 29, 2008 appellant requested reconsideration.

In an August 11, 2008 report, Dr. H.P. Hogshead, an Office medical adviser Board-certified in orthopedic surgery, found that appellant did not have grater impairment. He stated that Dr. Templin found a good physical examination and opined that his rating was skewed by an over-reliance on pain in determining the degree of impairment. Dr. Hogshead noted that pain should not be the dominant factor in rating impairments for knee replacements. He opined that a more appropriate rating for appellant's right knee would be 37 percent, consistent with the previous evaluation appellant underwent in 2008 by Dr. Larkin, which should be subsumed within the 41 percent impairment he had already been awarded.

In an August 14, 2008 report, Dr. Larkin reiterated that appellant had no more than a 37 percent impairment in each knee.

By decision dated September 10, 2008, the Office denied modification of the June 24, 2008 Office decision. It indicated that Dr. Templin's impairment rating was not probative because it was based predominantly on pain. The Office noted that under section 18.3b of the A.M.A., *Guides*, examiners should not rely on pain to rate impairment for any condition that can be adequately rated by other factors set forth in the A.M.A., *Guides*.

In a report dated September 17, 2008, Dr. Templin asserted that his rating for right lower extremity impairment based on pain was not skewed, as it was rendered in accordance with the applicable tables for rating knee replacement at Chapter 17 of the A.M.A., *Guides*. He stated that the *Impairment Estimates Certain Lower Extremity Impairment Table*, Table 17-33 at page 547 of the A.M.A., *Guides*, provided the methodology to calculate an impairment rating for a total knee replacement, including unicondylar replacement. Dr. Templin advised that Table 17-33 utilized Table 17-35, *Rating Knee Replacement Results*, to determine degree of impairment based on a point system. He stated:

> "Once the number of points is determined, the individual falls within either good results, fair results or poor results. A good result is provided if the individual's points lie between 85 and 100 points. A fair result is given if the individual's points lie between 50 and 85 points and a poor result is given if an individual's points are less than 50 points. In [appellant's] case, his points added up to 60. This number was reached using Table 17-35. The determination uses several items, which include pain, range of motion, stability, flexion and contracture, extension lag and alignment. Under each item, specific points are given for the specific motion or condition which exists within that particular section. In

[appellant's] case, the 60 points were derived in the following manner: [p]ain -- [m]oderate [o]ccasional for 20 points; [r]ange of motion -- [f]lexion of 104 degrees for 22 points; [s]tability -- [a]nti-posterior movement of less than 5 millimeters -- 10 points; [l]ateral movement of 5 degrees -- 15 points = [t]otal [p]oints 67 points.

"Left -- [f]lexor [c]ontraction -- [f]lexion and [c]ontracture of 5 to 9 degrees -- 2 points; [e]xtension lag of less than 10 degrees 0 points; [a]ppropriate alignment -- 0 points = [t]otal [p]oints -- 7; 67 minus 7 equaled 60 points."

Dr. Templin stated that pursuant to Table 17-33 a finding of 60 points, lying between 50 and 84 points on the chart, constituted a fair result, which yielded a 50 percent lower extremity impairment for total right knee replacement. He noted that, under Table 17-35, he calculated 20 points based on moderate, occasional pain, based on appellant's complaints of constant aching pain in the right knee; this calculation also produced a 50 percent impairment for pain based on either calculation. Dr. Templin stated that appellant had previously been awarded a 50 percent impairment for total left knee replacement.

Dr. Templin stated his disagreement with the Office's reliance on Chapter 18 to limit impairment based on pain. He noted that, while Chapter 18 cautioned examiners not to rate pain-related impairment for any condition that could be adequately rated on the basis of the body and organ impairment system given in other chapters of the A.M.A., *Guides*, he had derived appellant's rating in conformance with Chapter 17, which requires the examiner to utilize pain as one of the criteria in determining the number of points to be evaluated.

On September 30, 2008 appellant requested reconsideration.

By decision dated December 8, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated February 10, 2009, appellant requested reconsideration.

In a report dated January 9, 2009, received by the Office on February 19, 2009, Dr. Templin reiterated that pain was one of the elements utilized in determining an impairment rating for total knee replacement. He stated that Table 17-33, at page 547, clearly instructs the examiner to utilize a total point system in determining whether there was a good, fair or poor result from the procedure.

In March 4, 2009 report, Dr. Hogshead stated that Dr. Templin's January 9, 2009 report "provided a basis for a disagreement" in rating appellant's impairment. He opined that his 50 percent rating for pain as a result of a total knee replacement was incorrect as it was based on subjective factors. Dr. Hogshead stated that the evaluation scale at Table 17-35 was flawed because it could be manipulated by subjective complaints; a rating for pain should be supported by objective factors such as loosening, infection, prior rehabilitation, gait, need for assistance, daily living activities and range of motion. He found that, since these factors were not present in appellant's case, such that he had no more than the 37 percent impairment already awarded.

By decision dated March 30, 2009, the Office denied modification of the June 24, 2008 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] set 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.[4] 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 ensure 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.[5] 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.[6]

ANALYSIS

The Board finds that the case is not in posture for decision due to an unresolved conflict in medical opinion.

In the present case, the Office medical adviser and Dr. Templin disagreed regarding the extent of impairment to appellant's right leg. In a May 16, 2008 report, the Office medical adviser relied on the opinion of Dr. Larsen, a treating physician who performed the right knee replacement procedure, to find that appellant had a 37 percent right lower extremity impairment and, therefore, did not have greater than the 41 percent impairment previously awarded. The Office denied an additional schedule award in its June 24, 2008 decision. Appellant subsequently submitted the opinion of Dr. Templin, who rated a 50 percent impairment of his right lower extremity based on a fair result from appellant's June 2007 total right knee replacement surgery under Tables 17-35 and 17-33 of the A.M.A., *Guides*. Dr. Hogshead, the Office medical adviser, found that this rating was not probative because Dr. Templin reported a good physical examination and relied disproportionately on pain in rating impairment. He reiterated that the more appropriate right lower extremity impairment for appellant's right knee was 37 percent, consistent with the 2008 evaluation. Dr. Larkin restated his 37 percent right lower extremity impairment rating in an August 14, 2008 report.

In reports dated September 17, 2008 and January 9, 2009, Dr. Templin reiterated his method for rating 50 percent impairment for pain and a fair result from the total knee replacement surgery as outlined at Tables 17-33 and 17-35 of the A.M.A., *Guides.* A point system is providing for rating degrees of pain and impairment. The Board notes that section 17.2j, *Diagnosis-Based Estimates*, the section of the A.M.A., *Guides* which pertains to knee

[3] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[4] *Id*. at 8107(c)(19).

[5] 20 C.F.R. § 10.404.

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

replacements, states at page 545 that knee replacement should first be rated using Table 17-35: the points obtained from that assessment are then applied to Table 17-33 for the diagnosis impairment rating. Dr. Templin relied on these guidelines in rating 50 percent impairment in conformance with the applicable protocols of the A.M.A., *Guides*. His reports presented a probative, well-supported method for calculating appellant's right lower extremity impairment.

The Board finds that, a conflict in medical opinion exist between Dr. Templin and Dr. Hogshead concerning the extent of permanent impairment to appellant's right lower extremity due to his work-related right knee replacement surgery. The Board will set aside the March 30, 2009 Office decision and remand the case for referral to an appropriate impartial medical specialist. After such further development of the record as it deems necessary, the Office shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2009 and September 10 and June 24, 2008 decisions of the Office of Workers' Compensation Programs be set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Issued: July 22, 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