United States Department of Labor
Employees' Compensation Appeals Board

H.P., Appellant	)	
and	)	**Docket No. 10-962**
	)	**Issued: November 10, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Tarboro, NC, Employer	)	

Appearances:
Greg Dixon, 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 February 23, 2010 appellant, through his representative, filed a timely appeal from the September 16, 2009 merit decision of the Office of Workers' Compensation Programs, which granted him a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant has greater than seven percent impairment of his right lower extremity.

FACTUAL HISTORY

On June 24, 2006 appellant, then a 52-year-old letter carrier, filed a claim alleging that he sustained a right knee injury in the performance of duty: "Because over the majority of my postal career I carried that mailbag weighing up to 35 lbs about 12, 13 miles a day 5 to 6 days a week, compensating for my left knee putting … weight on my right leg (knee), which was my

good knee during that time." The Office accepted his claim for a torn right medial meniscus and, later, for severe chondromalacia, femoral condyle.

Appellant underwent arthroscopic surgeries and filed a schedule award claim. Dr. Lawrence J. Yenni, an orthopedic surgeon and Office referral physician, evaluated appellant and found arthritic changes "primarily in the weight bearing surface of the knee joint as well as the patellofemoral joint." Based on the combination of those two joints, he concluded that appellant had a 13 percent impairment of his right lower extremity.

An Office medical adviser reviewed Dr. Yenni's impairment evaluation and noted that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008) permits recognition of only the principal disabling condition. "In other words, both joint compartments cannot be considered." He concluded that appellant had seven percent impairment of the right lower extremity due to primary knee joint arthritis.

On September 16, 2009 the Office issued a schedule award for seven percent impairment of appellant's right lower extremity.

On appeal, appellant's representative does not dispute the finding that appellant has seven percent impairment of his right lower extremity due to primary knee joint arthritis. He argues that appellant also has an impairment caused by the arthritis in his patellofemoral joint. The simple question the Board must answer, he explains, is whether arthritis in two separate compartments of the same knee causes increased impairment: both are diagnosis-based impairments, and the sixth edition of the A.M.A., *Guides* "requires the combination of such impairments." He concludes that the Office should accept Dr. Yenni's combined rating of 13 percent and asks the Board to remand the case on such a finding.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[1] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[2]

It is well established that, in determining entitlement to a schedule award, preexisting impairments to the scheduled member are to be included.[3] Office procedures state that any previous impairment to the member under consideration is included in calculating the percentage

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

[3] *Michael C. Milner*, 53 ECAB 446, 450 (2002); *Raymond E. Gwynn*, 35 ECAB 247 (1983).

of loss, except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.[4]

ANALYSIS

The Office accepted appellant's claim for a torn right medial meniscus and severe chondromalacia, femoral condyle. It did not accept patellofemoral arthritis, nor does the record establish patellofemoral arthritis as a previous or preexisting impairment. Appellant's schedule award should therefore not include any impairment resulting from arthritis of the patellofemoral joint.

Even if patellofemoral arthritis or chondromalacia patella were a preexisting condition, it would not be included in appellant's schedule award. When the Office medical adviser noted that the sixth edition of the A.M.A., *Guides* permits recognition of only the principal disabling condition, he was not offering personal opinion:

> "In most cases, only one diagnosis in a region (*i.e.*, hip, knee and/or foot/ankle) will be appropriate. If a patient has two significant diagnoses, for instance, ankle instability and posterior tibial tend[i]nitis, the examiner should use the diagnosis with the highest impairment rating in that region that is causally related for the impairment calculation."[5]

Further:

> "If more than one diagnosis in a region (*i.e.*, hip, knee and/or foot/ankle) can be used, the one that provides the most clinically accurate and causally related impairment rating should be used; this will generally be the more specific diagnosis. Typically, one diagnosis will adequately characterize the impairment and its impact on [activities of daily living]."[6]

In Example 16-9, page 526, the diagnoses are status post anterior cruciate ligament reconstruction and medial meniscus repair. The A.M.A., *Guides*' comment: "The methodology requires the examiner to pick one diagnosis for the region. The anterior instability diagnosis was chosen, and the effect of the meniscal tear is reflected in the adjustments."

Finally, at page 529, "Combining and Converting Impairments":

> "If there are multiple diagnoses within a specific region, then the most impairing diagnosis is rated, because it is probable this will incorporate the functional losses of the less impairing diagnoses. In rare cases of complex injury or occupational

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7.a(2) (November 1998).

[5] A.M.A., *Guides* 497.

[6] *Id*. at 499.

exposure, the examiner may combine multiple impairments within a single region, if the most impairing diagnosis does not adequately reflect the losses."

Arthritis in two separate compartments of the same knee does not warrant a combined impairment rating under the sixth edition of the A.M.A., *Guides*. Indeed, the methodology requires the examiner to pick one diagnosis for the region.

The medical record shows a clear focus of attention on the right medial meniscus and medial femoral condyle, the conditions the Office accepted as causally related to appellant's federal employment. Dr. Yenni, the Office referral orthopedist, reported that appellant showed arthritic changes primarily in the weight-bearing surface of the knee joint. As arthritis in the knee joint appears to be the most impairing diagnosis and the most clinically accurate and causally related, compared to either arthritic changes in the patellofemoral joint or to the partial medial meniscectomies, the methodology of the sixth edition of the A.M.A., *Guides* requires a rating based on that one diagnosis for the knee region.

The Board finds that the Office properly based appellant's schedule award on the diagnosis of primary knee joint arthritis. According to Table 16-3, page 511, a Class 1 impairment, characterized in part by full-thickness articular cartilage defect, carries a default impairment value of seven percent. Grade modifiers for mild functional symptoms and mild clinical findings, including those that might be attributable to patellofemoral arthritis or partial medial meniscectomy, do not alter the default value. The Board will therefore affirm the Office's September 16, 2009 decision finding seven percent impairment of the right lower extremity.

CONCLUSION

The Board finds that appellant has no more than seven percent impairment of his right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 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