United States Department of Labor
Employees' Compensation Appeals Board

C.R., Appellant	)	
and	)	**Docket No. 10-256**
	)	**Issued: October 8, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Columbus, OH, Employer	)	

Appearances:
Appellant, pro se
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 November 3, 2009 appellant filed a timely appeal from a September 21, 2009 merit 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 schedule award decision.

ISSUE

The issue is whether appellant met his burden of proof to establish that he is entitled to schedule awards greater than the 6 percent previously awarded for his right lower extremity and 10 percent for his left lower extremity.

FACTUAL HISTORY

On June 8, 1996 appellant, then a 39-year-old mail handler, filed an occupational disease claim, that was adjudicated under Office file number xxxxxx100 and accepted by the Office for aggravation of Morton's neuroma, bilateral feet. He underwent excision of the neuroma on the left on May 9, 1996 and by decision dated February 10, 1997 was granted a schedule award for a

10 percent permanent impairment of the left leg.[1] On April 23, 1997 appellant underwent the same procedure on the right leg and by decision dated August 14, 1998, was granted a schedule award for a five percent impairment of the right leg.[2] He had a second surgical excision on the right leg on November 10, 1999 and by decision dated October 23, 2000 the Office found that he was not entitled to an increased schedule award. On April 29, 2003 appellant filed a claim for an additional schedule award.[3]

In June 2003 the Office referred appellant to Dr. Oscar F. Sterle, a Board-certified orthopedic surgeon, for a second opinion evaluation and in a July 18, 2003 report, he provided physical examination findings and advised that maximum medical improvement had been reached regarding appellant's bilateral foot conditions. Dr. Sterle stated that, in accordance with Tables 17-14 and 17-37 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[4] appellant had a five percent impairment of each lower extremity. An Office medical adviser agreed with Dr. Sterle's conclusion and in a September 24, 2003 decision, the Office denied appellant's claim for an additional schedule award.

On July 6, 2005 appellant filed a claim that was adjudicated under Office file number xxxxxx516, accepted for bilateral osteoarthritis of the knees. Dr. Gerald M. Rosenberg, Board-certified in orthopedic surgery, performed extensive debridement and excision of plica band on the left leg on April 26, 2006 and extensive debridement and chondroplasty on the right leg on June 13, 2006. On June 30, 2007 appellant filed a schedule award claim and in August 2007 was referred to Dr. Manhal A. Ghanma, a Board-certified orthopedist, for a second opinion evaluation. On September 25, 2007 Dr. Ghanma reported that knee x-ray studies demonstrated narrowing of the medial joint spaces in both knees with three millimeters cartilage intervals bilaterally. He provided range of motion findings and noted no crepitation on range of motion examination, no motor weakness or abnormality of gait, stance or balance. Dr. Ghanma advised that appellant had reached maximum medical improvement and that, in accordance with Table 17-10 of the fifth edition of the A.M.A., *Guides*, he was not entitled to an impairment rating for either knee due to loss of range of motion, but that he was entitled to a seven percent impairment for each knee under Table 17-31, based on narrowing of the medial cartilage space as evidenced by x-rays. By report dated October 17, 2007, an Office medical adviser stated that maximum medical improvement was reached on July 26, 2006, that appellant was not entitled to a schedule

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[1] In a July 8, 1997 decision, an Office hearing representative affirmed the February 10, 1997 schedule award determination.

[2] In a November 21, 1997 decision, the Office denied appellant's claim for a schedule award for the right lower extremity. On April 8, 1998 an Office hearing representative set aside the November 21, 1997 decision and remanded the case to the Office for further development of the medical evidence.

[3] Appellant has a number of accepted claims for aggravation of lumbar disc disease, ganglion cyst and tenosynovitis, lumbar sprain, aggravation of osteoarthritis of the knee, lumbosacral sprain and right knee sprain, bilateral aggravation of joint disease of the hips, left ankle tenosynovitis, right shoulder arthroscopy and aggravation of lumbar disc disease.

[4] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

award based on bilateral range of motion findings and that, under Table 17-31, he was entitled to a seven percent impairment for each lower extremity due to the cartilage interval finding.

In the interim, on April 25, 2007 under file number xxxxxx509, the Office accepted that appellant sustained aggravation of Achilles tendinitis and aggravation calcaneal spur on the left. On December 12, 2007 it combined the files for the three claims noted above, with file number xxxxxx100 becoming the master. In February 2008, the Office referred appellant to Dr. Karl V. Metz, a Board-certified orthopedic surgeon, for a second opinion evaluation for an assessment of the accepted conditions in all three claims and an impairment evaluation. In a February 28, 2008 report, Dr. Metz provided lower extremity examination findings and noted that appellant's right thigh was three centimeters greater than the left. He concluded that, in accordance with the fifth edition of the A.M.A., *Guides* appellant had a zero percent impairment for his knees, a zero percent impairment for his feet and a 13 percent impairment for 3.0 centimeters of left thigh atrophy.

On April 9, 2008 an Office medical adviser reviewed the medical record including Dr. Metz's report and advised that in accordance with Tables 17-10 and 17-14 of the fifth edition of the A.M.A., *Guides* appellant had a zero percent impairment due to knee and toe range of motion and that under Table 17-6, he was entitled to a 13 percent impairment for 3.0 centimeters of left thigh atrophy.

In May 2009 the Office referred appellant to Dr. E. Gregory Fisher, a Board-certified orthopedist, for a second opinion evaluation and impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.[5] In a June 15, 2009 report, Dr. Fisher provided examination findings for the lower extremities and advised that in regard to the bilateral Morton's neuroma with surgeries, appellant had a residual decreased sensation over the third and fourth toes bilaterally with normal motion in the toes. In regards to the bilateral aggravation of osteoarthritis of the knees with surgery, Dr. Fisher had decreased range of motion of flexion to 90 degrees bilaterally, patellofemoral and medial crepitation on flexion and extension bilaterally and one-half inch muscle atrophy of the right thigh when compared to the left thigh. He found no objective findings over the left Achilles tendon or the left heel. Dr. Fisher advised that maximum medical improvement for the right knee occurred by September 13, 2006 and July 26, 2006 on the left. In regards to the Morton's neuroma, he advised that appellant reached maximum medical improvement by January 1, 1998 on the right and January 1, 2002 on the left and in regard to aggravation of the left Achilles tendinitis and the aggravation of the left heel spur, maximum medical improvement was reached by June 2007. Dr. Fisher advised that, in accordance with Chapter 16 of the sixth edition of the A.M.A., *Guides* for the left Achilles tendinitis and the left heel spur, using Table 16-2, appellant would fit a Class 0 category, yielding no impairment for these conditions. For the right and left Morton's neuromas, he advised that, based on decreased sensation to light touch over the third and fourth toes bilaterally, under Tables 16-11 and 16-12, appellant had a Class 1 impairment and under the adjustment grid, a functional history of one, physical examination of one and nonapplicable clinical signs, for a two percent impairment of the lower extremity for the right foot and a two percent impairment of the lower extremity for the left foot stemming from the aggravation of the

[5] A.M.A., *Guides* (6th ed. 2008).

Morton's neuroma. For the osteoarthritis of the bilateral knees, Dr. Fisher advised that under Table 16-3 appellant would fit Class 1 for a three millimeter cartilage interval and defects noted surgically, with a grade modifier for functional history under Table 16-6 of zero percent, under Table 16-7 for physical examination of one percent and under Table 16-8 for clinical finding of one percent, yielding an adjusted impairment of four percent for each lower extremity based on bilateral osteoarthrosis of the knees. He then combined the foot impairments of two percent with the knee impairments of four percent, yielding a six percent impairment of each lower extremity.

By report dated July 2, 2009, Dr. Nabil F. Angley, an Office medical adviser who is Board-certified in orthopedic surgery, reviewed Dr. Fisher's report and agreed with his conclusion that appellant had a total six percent left lower extremity impairment and a six percent impairment on the right.

On September 21, 2009 appellant was granted a schedule award for an additional one percent right lower extremity impairment. The Office noted that he had previously received a schedule award for a 10 percent left lower extremity impairment, greater than the 6 percent found by Dr. Fisher and was thus not entitled to an additional schedule award for a left lower extremity impairment. The award was for 2.88 weeks, to run from September 13, 2006, the date of maximum medical improvement for the right knee, to October 3, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[6] and its implementing federal regulations,[7] 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[8] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[9] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[10]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[11] Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by

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[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id*. at § 10.404(a).

[9] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[10] FECA Bulletin No. 09-03 (issued March 15, 2009).

[11] *Supra* note 5 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).[12] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the Office medical adviser providing rationale for the percentage of impairment specified.[14]

ANALYSIS

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.[15] Appellant's accepted diagnosed conditions are bilateral Morton's neuromas, bilateral osteoarthritis of the knees and aggravation of Achilles tendinitis and calcaneal spur on the left. On February 10, 1997 he was granted a schedule award for a 10 percent permanent impairment of the left leg and on August 14, 1998, a schedule award for a 5 percent impairment of the right leg. On September 21, 2009 appellant was granted a schedule award for an additional one percent on the right.

By report dated June 15, 2009, Dr. Fisher discussed the relevant tables in the sixth edition of the A.M.A., *Guides*. He followed the assessment formula of the sixth edition of the A.M.A., *Guides* and advised that, in accordance with Chapter 16, for the left Achilles tendinitis and the left heel spur, using Table 16-2, Foot and Ankle Regional Grid, appellant would fit a Class 0 category, yielding no impairment for these conditions.[16] For the right and left Morton's neuromas, Dr. Fisher advised that, based on decreased sensation to light touch over the third and fourth toes bilaterally, under Tables 16-11, Sensory and Motor Severity and 16-12, Peripheral Nerve Impairment, appellant had a Class 1 impairment[17] and under the adjustment modifiers described in section 16.4, a functional history of one, physical examination of one and no clinical signs,[18] for a two percent impairment of the lower extremity for the right foot and two percent impairment of the lower extremity for the left foot, stemming from the aggravation of the Morton's neuroma. For the osteoarthritis of the bilateral knees, he advised that under Table 16-3, Knee Regional Grid, appellant would fit a Class 1 with 3.0 millimeter cartilage interval and defects noted surgically. Dr. Fisher then applied the grade modifiers described in Table 16-5

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[12] *Id*. at 494-531.

[13] *Id*. at 521.

[14] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

[15] *Id*.

[16] *Supra* note 5 at 501-08.

[17] *Id*. at 533-35.

[18] *Id*. at 531-33.

with analysis provided in Tables 16-6 through 16-8 and the net adjustment formula[19] and determined that appellant was not entitled to an additional impairment for functional history (GMFH) and an additional one percent for physical examination (GMPE) and an additional one percent for clinical studies (GMCS), yielding an adjusted impairment of four percent for each lower extremity based on bilateral osteoarthrosis of the knees.[20] Dr. Fisher then combined the impairments of two percent for each foot with the four percent impairments for each knee, yielding a six percent impairment of each lower extremity. Dr. Angley, an Office medical adviser reviewed Dr. Fisher's report and agreed with his conclusion that appellant had a total six percent left lower extremity impairment and a six percent impairment on the right.

The Board finds that Dr. Fisher's medical report constitutes the weight of medical opinion. The record does not contain any evidence to establish greater impairment to each lower extremity in accordance with the sixth edition of the A.M.A., *Guides*. Appellant has not established that he sustained more than a 6 percent right lower extremity impairment and 10 percent impairment on the left.

CONCLUSION

The Board finds that appellant has a 6 percent right lower extremity impairment and a 10 percent impairment on the left.

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[19] *Id*. at 515-21.

[20] *Id*. at 517, 519.

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 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