United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 10-788**
	)	**Issued: October 14, 2010**
DEPARTMENT OF THE NAVY, NAVAL SEA SYSTEMS COMMAND, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 29, 2010 appellant, through his attorney, filed a timely appeal of an October 19, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has more than 10 percent impairment of the left leg for which he received a schedule award.

FACTUAL HISTORY

On February 16, 2007 appellant, then a 54-year-old mechanical engineering technician, injured his left knee while climbing and kneeling in awkward positions installing an antenna system in the performance of duty. The Office accepted a left knee medial meniscus tear. Dr. Mathew Pepe, a Board-certified orthopedic surgeon, performed arthroscopic surgery on December 6, 2007. He found medial lateral meniscal tears as well as medial and lateral

compartment degenerative joint disease with trochlear chondrosis. Dr. Pepe reported that appellant's cruciate ligaments were normal, that range of motion was to 130 degrees and that appellant was stable to varus and valgus stress with no rotatory instability. On January 15, 2008 the Office entered appellant on the periodic rolls.

On June 16, 2008 Dr. Pepe stated that appellant had "almost completely resolved left knee symptoms." He noted that appellant was working full duty without difficulty. Dr. Pepe found that appellant had no effusion, range of motion from 2 to 130 degrees, stable ligaments and no medial or lateral joint line tenderness. He advised that appellant had reached maximum medical improvement, but might require periodic injections or a total knee arthroplasty. Dr. Pepe subsequently performed injections of appellant's left knee.

Appellant, through his attorney, requested a schedule award on December 19, 2008. In a report dated October 28, 2008, Dr. Steven M. Allon, an orthopedic surgeon, found minimal effusion, and tenderness over the medial joint line, the medial patellar facet and lateral joint line. He stated that appellant was unable to kneel or squat and had a Grade 1 positive Drawer's sign, but a negative Lachman's sign. Dr. Allon stated that appellant had left knee pain and stiffness. He rated 10 percent impairment due to partial medial and lateral meniscectomies based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Allon also found seven percent impairment for mild left knee cruciate ligament laxity and three percent pain-related impairment under Chapter 18. He concluded that appellant had a total 19 percent impairment of the left leg.

The Office referred the record to the district medical adviser on December 30, 2008. In a January 15, 2009 report, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon, reviewed the medical evidence. He agreed with the 10 percent impairment rating due to medial and lateral meniscectomies under Table 17-33 but found no clinical evidence to support cruciate ligament laxity. Dr. Berman noted that Dr. Pepe reported that appellant had a normal anterior cruciate ligament during surgery with no ligament laxity and concluded that this impairment rating by Dr. Allon was not supported by the evidence of record. He also disagreed with the three percent impairment awarded by Dr. Allon for pain as Chapter 18 was not the proper standard for rating the lower extremity.

By decision dated March 13, 2009, the Office granted appellant a schedule award for 10 percent impairment of his left lower extremity.

Appellant, through counsel, requested an oral hearing that was held on July 28, 2009. He described his employment injury and his current knee condition. Following the hearing, appellant submitted a statement describing his left knee condition following surgery.

By decision dated October 19, 2009, an Office hearing representative affirmed the March 13, 2009 decision, finding that the impairment rating of Dr. Berman represented the weight of medical opinion.

LEGAL PRECEDENT

The schedule award provision of the Act[1] and its implementing regulations[2] 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. Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[3]

In evaluating lower extremity impairments, Chapter 17 of the A.M.A., *Guides* notes that alternative methods exist by which impairment may be assessed: anatomic, functional or diagnosis-based estimates.[4] The evaluator is directed to the cross-usage chart at Table 17-2 on page 526 to determine when the methods for evaluating impairment may be combined. The Office's procedure manual also provides, "Before finalizing any physical impairment calculation that requires the combination of evaluation factors, the [Office medical adviser] should verify the appropriateness of the combination in Table 17-2."[5]

The fifth edition of the A.M.A., *Guides* provides for an impairment percentage to be increased by up to three percent for pain by using Chapter 18, which provides a qualitative method for evaluating impairment due to chronic pain. If an individual appears to have a pain-related impairment that has increased the burden on his or her condition slightly, the examiner may increase the percentage up to three percent. However, examiners should not use Chapter 18 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*.[6]

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment and the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.[7]

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

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

[4] A.M.A., *Guides* 525.

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

[6] *Id*.; A.M.A., *Guides* at 18.3(b); *see also Philip Norulak*, 55 ECAB 690 (2004).

[7] *Linda Beale*, 57 ECAB 429 (2006).

ANALYSIS

Appellant sustained injury to his left knee and underwent surgery on December 6, 2007 by Dr. Pepe. In support of his claim of a schedule award he provided a 19 percent impairment rating by Dr. Allon, an attending orthopedic surgeon. The district medical adviser, Dr. Berman, a Board-certified orthopedic surgeon, agreed with Dr. Allon to the extent he utilized the A.M.A., *Guides*, in rating appellant's impairment under Table 17-33. They agreed that appellant had 10 percent impairment of the left lower extremity due to surgery for the medial and lateral meniscectomies.[8]

Dr. Allon also found that appellant had three percent impairment due to pain be under Chapter 18 of the A.M.A., *Guides*. Dr. Berman disagreed with this impairment rating finding that this chapter was not applicable to appellant. As noted, the Board has found that Chapter 18 is applicable only in limited circumstances. Dr. Allon did not provide adequate medical reasoning for rating pain under this chapter in concert with the diagnosis-based estimate of Table 17-33. He did not explain why any sensory loss could not be rated under Chapter 17. The Board finds that the additional three percent impairment rating due to pain was not appropriate.

Dr. Allon also found seven percent impairment due to anterior cruciate ligament laxity.[9] He reported a negative Lachman's sign, but a Grade 1 positive anterior drawer's sign.[10] Dr. Berman reviewed the medical evidence and found that, on surgery, Dr. Pepe did not find any cruciate ligament laxity in the December 6, 2007 operative report. The June 16, 2008 report of Dr. Pepe found that appellant had reached maximum medical improvement. Dr. Berman concluded that there was insufficient evidence to support cruciate ligament laxity. The Board finds the reports of Drs. Pepe and Berman constitute the weight of the medical evidence and establish that appellant has no cruciate ligament laxity. Dr. Pepe examined appellant's cruciate ligaments directly on arthroscopic surgery and found the ligaments were normal. Dr. Berman relied on this finding in determining that appellant had no cruciate ligament laxity. Dr. Allon found that Lachman's sign was negative and that drawer's sign was only mildly positive. These limited findings on physical examination are not adequate to establish permanent impairment given the results of appellant's surgical findings. Dr. Allon provided no report contrasting his finding to that of Dr. Pepe at the time of surgery.

On appeal, counsel contends that there is a conflict of medical opinion between Dr. Berman and Dr. Allon regarding the extent of appellant's permanent impairment. As noted, the Board finds that Dr. Berman's report is entitled to the weight of the medical evidence. Dr. Allon's impairment rating for pain did not conform to the A.M.A., *Guides* and his rating for ligament laxity is not adequately explained in light of the surgical report.

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[8] A.M.A., *Guides* 546, Table 17-33.

[9] *Id.*

[10] Both the Lachman's test and the anterior drawer's test are used to assess the integrity of the anterior cruciate ligament. Daniel H. Soloman, MD, *Does this Patient Have a Torn Meniscus of Ligament of the Knee*, Journal of the American Medical Association, October 3, 2001 – Vol. 286, No. 13.

CONCLUSION

The Board finds that appellant has no more than 10 percent impairment of his left lower extremity for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2010
Washington, DC

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

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

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