

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**G.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Newport, TN, Employer**

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**Docket No. 10-227  
Issued: September 9, 2010**

*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 October 30, 2009 appellant filed a timely appeal of the August 26, 2009 merit decision of the Office of Workers' Compensation Programs finding that he had no more than two percent impairment of the left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

On appeal appellant contends that the Office failed to consider his employment-related anterior cruciate ligament (ACL) tear and resultant reconstructive surgery and continuing employment-related left knee pain and limited use of his knee prior to issuing its schedule award decision.

## **FACTUAL HISTORY**

The Office accepted that on May 30, 2008 appellant, then a 43-year-old city carrier, sustained a left knee strain while in the performance of his work duties. On October 13, 2008 appellant underwent resection of a medial meniscus tear, debridement of joint and reconstruction of the ACL utilizing bone-tendon-bone autograft on the left knee. The surgery was performed by Dr. William M. Hovis, an attending Board-certified orthopedic surgeon.

On August 8, 2009 appellant filed a claim for a schedule award. In a July 6, 2009 medical report, Dr. Hovis diagnosed minimal degenerative arthritis. He advised that appellant had reached maximum medical improvement. On physical examination, Dr. Hovis reported that the left knee had an excellent objective appearance. There was no effusion. There was normal motion with some very mild crepitation without pain and excessive recurvatum, flexion contracture or restrictions. The ACL and Lachman's stress and drawing testing were normal and the pivot shift was negative. Stress of the posterior cruciate ligament was normal to drawer testing and there was no significant tendency towards hyperextension or instability in the cruciates or in comparison to the opposite knee. Stress of the medial collateral ligament revealed no give at full extension or 20 degrees of flexion. There was very slight play on stress of the lateral ligament which was normal. There was no significant difference between the knees. On x-ray examination, Dr. Hovis reported that the left knee had postsurgical changes consistent with the prior ACL reconstruction surgery. There was a satisfactory postoperative appearance. There was no evidence of any disruption of the graft. Some minimal arthritic change was seen, but there was no progression of this change when compared with earlier films.

Dr. Hovis determined that appellant sustained two percent impairment of the left knee based on his partial medial meniscal resection according to Table 16-3 on page 509 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He further determined that appellant sustained seven percent impairment due to his cruciate ligament injury. Dr. Hovis combined these impairment ratings to conclude that appellant sustained nine percent impairment of the left lower extremity which represented four percent impairment of the whole person.

By letter dated August 18, 2009, the Office accepted appellant's claim for an ACL and medial meniscus tear of the left knee.

Also, on August 18, 2009 an Office medical adviser reviewed appellant's medical records, including Dr. Hovis' July 6, 2009 findings. He noted appellant's October 13, 2008 left knee partial medial meniscectomy with reconstruction of the ACL. The medical adviser further noted Dr. Hovis' findings that the left knee had normal range of motion, no effusion or instability and minimal osteoarthritis that had not progressed since prior x-ray films. He determined that appellant reached maximum medical improvement on July 6, 2009. The medical adviser determined that appellant sustained two percent impairment of the left lower extremity based on his partial medial meniscectomy (A.M.A., *Guides* 509, Table 16-3). He found that appellant was not entitled to any adjustments for other functional deficits (A.M.A., *Guides* 516, 517, 519 and

521, Table 16-6, Table 16-7 and Table 16-8).<sup>1</sup> The medical adviser determined that appellant sustained a zero percent impairment for his employment-related ACL condition as the left knee had no instability and his reconstruction surgery of the cruciate or collateral ligament injury was not a rating factor per the A.M.A., *Guides*. (A.M.A., *Guides* 510, Table 16-3). He concluded, based on appellant's partial meniscectomy that appellant sustained two percent impairment of the left lower extremity.

By decision dated August 26, 2009, the Office granted appellant a schedule award for two percent impairment of the left lower extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulations<sup>3</sup> 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 of loss of use.<sup>4</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used to calculate schedule awards.<sup>6</sup>

### **ANALYSIS**

The Office accepted appellant's claim for a strain and torn ACL and medial meniscus of the left knee. Appellant underwent partial resection of a medial meniscus tear, debridement of the joint and reconstruction of the ACL to treat the accepted left lower extremity conditions. On August 26, 2009 he received a schedule award for two percent impairment of his left lower extremity. The Board finds that appellant has not met his burden of proof to establish that he has greater impairment than that for which he received a schedule award.

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<sup>1</sup> The Office medical adviser demonstrated that there was no change by showing the following: Functional History Grade Modifier (FHGM) mild problem was 1-1 = 0 (A.M.A., *Guides* 516, Table 16-6); Physical Examination Grade Modifier (PEGM) mild problem was 0-1 = -1 (A.M.A., *Guides* 517, Table 16-7) and Critical Study Grade Modifier (CSGM) mild problem was inapplicable, thereby resulting in zero (A.M.A., *Guides* 519, Table 16-8). The Office medical adviser subtracted the results of the PEGM -- 1 from the results of the FHGM 0, resulting in a net adjustment of -1.

<sup>2</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> 5 U.S.C. § 8107(c)(19).

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a. (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

On July 6, 2009 Dr. Hovis an attending physician, opined that appellant sustained nine percent impairment of the left lower extremity based on his partial medial meniscal resection and employment-related ACL injury. Two percent impairment of the left knee was based on his partial medial meniscal resection (A.M.A., *Guides*, 509, Table 16-3) and seven percent impairment was due to his employment-related ACL injury. Dr. Hovis combined the two impairment ratings to conclude that appellant had nine percent impairment of the left lower extremity which constituted a four percent impairment of the whole person. The Board notes that, although Dr. Hovis properly applied the A.M.A., *Guides* in finding that appellant sustained two percent impairment based on his partial medial meniscectomy, he failed to explain how he arrived at his impairment rating of nine percent for appellant's accepted ACL condition. Dr. Hovis did not refer to any edition of the A.M.A., *Guides* or the specific tables he applied to support his rating. Under the new edition of the A.M.A., *Guides*, it is clearly stated that an impairment rating consists of a clinical evaluation, an analysis of the findings and discussion of how the impairment rating was connected. This is so any knowledgeable observer may check the finding against the A.M.A., *Guides* critics. It is well established that, when an attending physician's report provides an estimate of impairment, but does not address how the rating was made under the A.M.A., *Guides*, it is of reduced probative value. The Office may follow the advice of its medical adviser or consultant.<sup>7</sup>

On August 18, 2009 the Office medical adviser reviewed Dr. Hovis' findings with reference to the sixth edition of the A.M.A., *Guides*. The medical adviser determined that under Table 16-3 on page 509 of the A.M.A., *Guides* appellant sustained two percent impairment of the left lower extremity due to his October 13, 2008 partial medial meniscectomy with reconstruction of the ACL. The medical adviser further determined that appellant was not entitled to any adjustments for other functional deficits under Table 16-6, Table 16-7 and Table 16-8 on pages 516, 517 and 519, respectively of the A.M.A., *Guides* as a -1 percent net adjustment was found. Regarding impairment of appellant's employment-related torn ACL of the left knee, the medical adviser determined that he sustained a zero percent impairment as his knee had no instability and his reconstruction surgery was not a rating factor (A.M.A., *Guides* 510, Table 16-3).

The Office medical adviser's opinion, that appellant had a two percent impairment of the left lower extremity, is based on a proper review of the record and appropriate application of the A.M.A., *Guides*. There is no probative medical evidence to establish that appellant sustained greater permanent impairment. The Board will affirm the August 26, 2009 decision.<sup>8</sup>

Appellant contended on appeal that the Office failed to consider his employment-related ACL condition and resultant reconstructive surgery prior to issuing its August 26, 2009 decision. The Board notes that the Office medical adviser's opinion was based on proper application of the A.M.A., *Guides* and did properly considered both the ACL condition and the surgery. As stated, the medical adviser properly determined that under Table 16-3 on page 510 of the A.M.A., *Guides* appellant sustained a zero percent impairment as his left knee had no instability and his

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<sup>7</sup> *J.Q.*, 59 ECAB \_\_\_ (Docket No. 06-2152, issued March 5, 2008); *Laura Heyen*, 57 ECAB 435 (2006).

<sup>8</sup> See *C.J.*, 60 ECAB \_\_\_ (Docket No. 08-2429, issued August 3, 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

ACL reconstruction surgery was not a rating factor. Appellant also contended that the Office's schedule award decision did not consider his continuing employment-related left knee pain and limited use of his knee. Chapter 3 of the sixth edition of the A.M.A., *Guides*, allows for a maximum three percent impairment for a painful condition that cannot be rated according to the principles outlined in other chapters. Under "no circumstances should the pain-related impairment developed using this chapter be considered as an add-on to impairment determinations based on the criteria listed in Chapters 4 to 17."<sup>9</sup> The Board notes that the current record does not support an award for pain under Chapter 3 as the Office medical adviser properly applied the A.M.A., *Guides* to Dr. Hovis' findings which included no left knee pain. For the stated reasons, the Board finds that appellant's contentions are not supported by the evidence of record.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he has more than two percent impairment of the left lower extremity, for which he received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 26, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 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

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<sup>9</sup> A.M.A., *Guides* 39.