United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 10-1000**
	)	**Issued: January 24, 2011**
U.S. POSTAL SERVICE, PROCESSING & DELIVERY FACILITY, Huntington, WV, Employer	)	

Appearances:
Alan J. Shapiro, Esq., 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 March 1, 2010 appellant, through his attorney, filed a timely appeal from the January 12, 2010 merit decision of the Office of Workers' Compensation Programs, which denied his claim for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

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

On appeal, appellant's attorney contends that the Office's decision is contrary to fact and law.

FACTUAL HISTORY

On March 26, 2001 appellant, then a 53-year-old electronic technician, filed a traumatic injury claim alleging that on that date when he squatted down to inspect a machine and when he

stood up, he felt a slight pop in his left knee. On February 15, 2006 the Office formally accepted his claim for sprain of knee, medial collateral ligament, left; and tear of the medial meniscus of knee, current. Appellant filed a claim for recurrence on January 30, 2006. On June 12, 2006 Dr. Jack R. Steel, a Board-certified orthopedic surgeon, the Office authorized an arthroscopic, partial, left medial meniscectomy.

On July 17, 2007 appellant filed a claim for a schedule award.

In a report dated March 3, 2008, Dr. Thomas F. Scott, a Board-certified orthopedic surgeon, concluded that based on the fifth edition of the America Medical Association, *Guides to the Evaluation of Permanent Impairment* (2001), Table 17-33, appellant had 22 percent impairment of the affected lower extremity. By memorandum dated April 2, 2008, the Office asked the Office medical examiner to review Dr. Scott's opinion and determine whether the A.M.A., *Guides* were properly applied and determine appellant's permanent impairment.

On April 4, 2008 the Office medical adviser noted that Dr. Scott did not explain how he arrived at 22 percent impairment. The Office medical adviser noted that pursuant to the A.M.A., *Guides* (fifth edition), Table 17-33, appellant is entitled to two percent impairment of the left lower extremity secondary to undergoing a partial medial meniscectomy, but noted that no other ratable deficits were noted.

In a June 9, 2008 report, Dr. Scott indicated that pursuant to the fifth edition of the A.M.A., *Guide*, Table 17-33, an impairment rating of seven percent of the lower extremity is awarded for a total meniscectomy medial and lateral and that, accordingly, appellant had a seven percent impairment of the involved extremity.

On July 8, 2008 the Office asked the Office medical adviser to comment on Dr. Scott's addendum to his report. In a reply of the same date, the Office medical adviser noted that Dr. Scott utilized figures for total medical meniscectomy whereas appellant had a partial medial meniscectomy. The Office medical adviser reiterated that appellant was entitled to two percent impairment of the left lower extremity based upon undergoing a partial medial meniscectomy.

By decision dated September 30, 2008, the Office issued a schedule award for two percent impairment of the left lower extremity.

On October 25, 2008 appellant, through her attorney, requested a telephonic hearing which was held on February 10, 2009.

On January 9, 2009 appellant submitted a medical report by Dr. Nancy Renneker, a Board-certified physiatrist, who opined that appellant was entitled to 27 percent impairment of the left lower extremity based on the fifth edition of the A.M.A., *Guides*. Dr. Renneker noted that in addition to 2 percent impairment for status post left knee partial medial meniscectomy, a five degree left knee flexion contracture represented an additional 10 percent left lower extremity impairment, that palpable and audible creptitus on the active left knee range of motion represented an additional 5 percent left lower extremity impairment and a 4/5 left knee extensor strength represented an additional 12 percent left lower extremity impairment. Combining these figures, she opined that appellant had 27 percent left lower extremity impairment.

By decision dated May 7, 2009, the hearing representative set aside the Office's September 30, 2008 decision, noting that appellant has now presented evidence showing strength loss and impaired motion and that to render a definitive determination on appellant's degree of impairment, the Office should refer appellant to a Board-certified specialist for a second opinion assessment, followed by the issuance of a *de novo* decision.

On remand, the Office referred appellant to Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon for a second opinion. By report dated July 24, 2009, Dr. Fisher noted that on review of the medical record and on examination, the sprain of the medial collateral ligament of the left knee had healed and resolved with no residuals. He noted no instability or laxity of the medial collateral ligament and no pain, tenderness or discomfort. Using the criteria found in the A.M.A., *Guides* (sixth edition, 2009) 510, Table 16-3, appellant would fit a class 0 because of no significant objective findings noted on examination. Therefore, Dr. Fisher concluded, she had zero percent lower extremity impairment based on the medial collateral ligament sprain/strain. For tear of the medial meniscus of the left knee, he noted that appellant had a partial medial meniscectomy performed three years ago with residual intermittent discomfort over the left knee area with no muscle atrophy or muscle weakness over the left thigh muscles. Dr. Fisher noted she had adequate range of motion of the left knee, but did note instability or effusion. He noted that x-rays taken two years ago revealed a normal knee except for some mid narrowing between the patellofemoral joint and that the magnetic resonance imaging (MRI) scan in 2006 revealed the tear of the medial meniscus with no other pathology. Dr. Fisher concluded that this information pursuant to the A.M.A., *Guides* 509, Table 16-3 would fit a class 1. He then addressed the modifiers. Using the A.M.A., *Guides*, Chapter 16, Table 16-6 for functional history adjustment, Dr. Fisher indicated that appellant would have a grade modifier of 0 because appellant does not have a gait derangement and does not use any orthotics or external support for ambulation. Using Chapter 16, Table 16-7 (page 517) for physical examination, he found a grade modifier of 1 because of the range of motion was from 0 to 115 degrees with some discomfort over the medial joint margin of the left knee. Using Chapter 16, Table 16-8 for clinical study adjustment, Dr. Fisher found that appellant had a positive MRI scan for tear of the medial meniscus only and that recent x-rays showed only mild narrowing of the joint space of the patellofemoral joint which fit a grade modifier of 1. Using this information, he gave her a minus 2 adjustment and a Grade A which equated to a one percent lower extremity impairment. Dr. Fisher noted that using the Combined Values Chart of zero percent and one percent gave appellant a total of one percent impairment to the lower extremity for all of the allowed conditions stemming from the injury of March 26, 2001.

By memorandum dated August 5, 2009, the Office asked the Office medical adviser to review Dr. Fisher's report and indicate whether the sixth edition of the A.M.A., *Guides* were properly applied.

In an August 12, 2009 report, the Office medical adviser applied the sixth edition of the A.M.A., *Guides* and determined that appellant had one percent impairment of the left lower extremity as a result of his accepted employment injury. Although he did not agree with all of Dr. Fisher's reasoning, he concluded that the final rating was proper. The Office medical adviser noted that it was error for Dr. Fisher to combine diagnoses. He noted that appellant's most impairing diagnosis was meniscal injury status post partial medial meniscectomy. The Office medical adviser stated that pursuant to the A.M.A., *Guides* 509-11, Table 16-3, the fact that

appellant underwent a partial medial meniscectomy for meniscal injury places him in Class 1 as a result of the diagnosis with a default Grade C equal to two percent of lower extremity impairment. With regards to functional history grade modifier, the Office medical adviser, utilizing the A.M.A., *Guides*, Table 16-6, page 516, chose a grade modifier of 1, which he noted was in agreement with that of the rating doctor. He noted that appellant was having ongoing symptoms, but did not have a gait derangement and does not use any orthotics or external support for ambulation. In determining the physical examination grade modifiers, the Office medical adviser utilized Table 16-7, page 517 of the A.M.A., *Guides* and noted that he was in disagreement with the rating doctor. He noted that while Dr. Fisher indicated decreased range of motion, he did not perform range of motion measurements in compliance with section 16.7, located on page 543. The Office medical adviser further noted that Dr. Fisher, did not document palpation and findings on pain. Accordingly, he concluded that appellant was not eligible for a rating under palpatory and observed findings and further noted that there were no other objective physical examination findings identified. With regards to the clinical studies grade modifier, the Office medical adviser, utilizing the A.M.A., *Guides*, page 519, Table 16-8, found a grade modifier of 0. He noted his disagreement with that of the rating doctor. The Office medical adviser noted that Dr. Fisher referred to mild narrowing of the joint space of the patellofemoral joint and assigned a grade modifier of 1, but the Office medical adviser found this had no relationship to meniscal surgery. He assigned a grade modifier of 1. The Office medical adviser also noted no other diagnostic tests specific to meniscal injury and, thus concluded that the final grade modifier equaled zero.[1] Using the net adjustment formula, he determined that the grade modifiers indicated that the net adjustment should be two grades to the left of Grade C (the default grade). The Office medical adviser finding the final grade for appellant was zero, concluded that appellant had one percent left lower permanent extremity impairment.

By decision dated September 3, 2009, the Office found that appellant was not entitled to a greater schedule award. It based this conclusion on Dr. Fisher's report that appellant had one percent impairment of the left lower extremity and the fact that the Office had previously issued a schedule award for two percent impairment of the left lower extremity.

On September 9, 2009 appellant, through his attorney, filed a request for a telephonic hearing. At the hearing held on November 30, 2009 appellant testified that Dr. Fisher's examination was cursory and that he spent most of the time reviewing the file.

By decision dated January 12, 2010, the hearing representative affirmed the September 3, 2009 decision.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act[2] provide compensation to employees sustaining impairment from loss or loss of use of specified member of the body. The Act, however, does not specify the manner in which the percentage loss of a

[1] The Office mistakenly stated that appellant had received a schedule award based on two percent impairment of the right lower extremity, whereas his injury was to his left lower extremity.

[2] 5 U.S.C. §§ 8101-8193.

member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[3] Effective May 1, 2009 the Office began using the sixth edition of the A.M.A., *Guides* to calculate schedule awards.[4]

In addressing lower extremity impairments, the sixth edition identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).[5] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[6]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed through 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.[7]

ANALYSIS

The Board finds that the Office properly determined that appellant was not entitled to greater than two percent impairment of the left lower extremity, for which he received a schedule award.

The Office accepted appellant's claim for sprain of knee, medial collateral ligament, left; and tear of the medial meniscus of knee, current. On September 30, 2008 it issued a schedule award based on two percent impairment of the lower extremity; an impairment that was based on calculations made under the fifth edition of the A.M.A., *Guides*. Subsequently, appellant submitted a medical report by Dr. Renneker which showed strength loss and impaired motion, and in a decision dated May 7, 2009, the hearing representative determined that as a result of this new evidence, the Office should refer appellant for a second opinion examination. The Office referred appellant to Dr. Fisher for an evaluation. Dr. Fisher utilized the sixth edition of the A.M.A., *Guides* in evaluating appellant's permanent impairment. In a report dated July 24, 2009, he found that appellant had one percent impairment of his left lower extremity. The Office referred this report to the Office medical adviser who in a report dated August 12, 2009, agreed with Dr. Fisher that appellant had one percent impairment of the left lower extremity, but

[3] *Bernard A. Babcock, Jr.*, 542 ECAB 143 (2000).

[4] 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).

[5] A.M.A., *Guides* (6th ed., 2009) at 494-531, *see J.B.*, 61 ECAB __ (Docket No. 09-2191, issued May 14, 2010).

[6] *Id*. at 521.

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

differed with Dr. Fisher as to the appropriate methodology for achieving this result. The Office medical adviser disputed Dr. Fisher's combining of impairment ratings for meniscal injury and collateral ligament sprain, noting that the sixth edition of the A.M.A., *Guides* indicates that only the most impairing diagnoses in the knee region may be rated. The A.M.A., *Guides* state that in most cases, only one diagnosis in a region will be appropriate, and that if a patient has two significant diagnoses, the examiner should use the diagnosis with the highest impairment rating in that region that is causally related for the impairment calculation.[8]

The Board finds that the Office medical adviser properly determined that appellant's most impairing diagnosis was meniscal injury status post partial medical meniscectomy, and that pursuant to Table 16-3 of the A.M.A., *Guides*, the fact that appellant underwent a partial medial menisectomy for meniscal injury placed him in a Class 1 with a default Grade C equal to two percent impairment of lower extremity impairment.[9] With regards to grade modifiers, the Office medical adviser found a grade modifier of 1 with regards to functional history, as appellant was having ongoing symptoms but did not have gait derangement and did not use any orthotics or external support for ambulation.[10] He found a Grade 0 for physical examination modifiers,[11] correctly noting that Dr. Fisher did not perform testing that would support his finding of a higher modifier. The Office medical adviser then found a grade modifier of 0 for clinical studies.[12] He noted that although Dr. Fisher found a grade modifier of 1 for clinical studies, the mild narrowing of joint space of the patellofemoral joint shown by x-rays bore no relationship to the meniscal surgery. Using the net adjustment formula, the Office medical adviser properly determined that the net adjustment should be two grades to the left of Grade C (the default grade), or a Grade A. He correctly determined that this would indicate that appellant had one percent impairment to his left lower extremity.[13] The Office medical adviser properly explained his calculations under the sixth edition of the A.M.A, *Guides* and why the attending physician misapplied the A.M.A., *Guides.* There is no probative medical evidence of record that appellant had a greater impairment. Accordingly, appellant has not established entitlement to greater than two percent impairment of the left lower extremity, for which he received a schedule award.

CONCLUSION

The Board finds that appellant has not established that he has more than two percent impairment of his left lower extremity for which he received a schedule award.

[8] A.M.A., *Guides* (6th ed., 2009) at 497.

[9] *Id.* at 509, 521.

[10] *Id.* at 516, Table 16-6.

[11] *Id.* at 517, Table 16-7.

[12] *Id.* at 519, Table 16-8.

[13] *Id*. at 509.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2010 is affirmed.

Issued: January 24, 2011
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