

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

_____)	
E.S., Appellant)	
)	
and)	Docket No. 10-2096
)	Issued: June 7, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Las Vegas, NV, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 13, 2010 appellant filed a timely appeal from the August 5, 2010 Office of Workers' Compensation Programs' schedule award decision. Pursuant to the Federal Employees' Compensation Act¹ and 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 12 percent impairment of his right lower extremity, for which he received a schedule award.

FACTUAL HISTORY

Appellant, a 30-year-old letter carrier, injured his right knee and right quadriceps on May 9, 2009 when his mail truck was struck head on by another vehicle. He filed a claim for benefits on May 11, 2009, which the Office accepted for ruptured right quadriceps tendon; open

¹ 5 U.S.C. § 8101 *et seq.*

wounds to his right quadriceps, hip, knee and ankle; cervical sprain; contusion of right hip; contusion of right abdominal wall; and contusions of his face, scalp and neck.

On May 14, 2009 appellant underwent surgery to repair his ruptured quadriceps tendon, in addition to right knee irrigation and debridement and closure of laceration. The procedure was performed by Dr. Renny Uppal, a Board-certified orthopedic surgeon.

On February 9, 2010 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right lower extremity.

In order to determine whether appellant had any permanent impairment from his accepted right quadriceps condition, the Office referred him to Dr. Aubrey A. Swartz, Board-certified in orthopedic surgery. In a June 9, 2010 report, Dr. Swartz found that appellant had a 12 percent permanent impairment of the right lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). He found that appellant had a 2 centimeter atrophy of the right quadriceps by measuring a 56.5 centimeter circumference in the right quadriceps, as opposed to 58.5 centimeter circumference in the left quadriceps. Dr. Swartz also found a 1 centimeter atrophy in his right calf by measuring a 41 centimeter circumference in the right quadriceps, as opposed to a 42 centimeter circumference in the left calf. He concluded that there was 3.5 to 4/5 quadriceps strength on the right with 4/5 hamstring strength. Dr. Swartz also calculated a 40 degree loss of range of motion impairment by calculating 0 to 100 degrees range of motion in the right knee as opposed to 0 to 140 degrees range of motion in the left knee.

Dr. Swartz determined that appellant's ruptured quadriceps tendon yielded a default impairment of class 1, which equated to 10 percent impairment -- a mild problem/moderate motion deficit -- under the knee regional grid at Table 16-3, page 509 of the A.M.A., *Guides*.² He then added and subtracted the grade modifiers from Table 16-6 and Table 16-7. This yielded 12 percent impairment of the right lower extremity impairment for repaired ruptured right quadriceps tendon, moderate motion deficit/and or significant weakness.

In a July 2, 2010 report, an Office medical adviser adopted Dr. Swartz's findings and conclusions and found that appellant had 12 percent permanent impairment of the right lower extremity.

By decision dated August 5, 2010, the Office granted appellant a schedule award for 12 percent permanent impairment of the right lower extremity for the period May 14, 2010 to January 10, 2011, for a total of 34.56 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Act³ and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

² A.M.A., *Guides* 509.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404. Effective May 1, 2009, the Office began using the A.M.A., *Guides* (6th ed. 2009).

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.⁵

ANALYSIS

In its August 5, 2010 decision, the Office granted appellant a schedule award for 12 percent right lower extremity impairment based on a ruptured right quadriceps repair, moderate motion deficit and/or significant weakness, using the applicable table of the sixth edition of the A.M.A., *Guides*. The section of the A.M.A., *Guides* which rates diagnosis-based impairments for the lower extremities is located at Chapter 16, which states at page 497, section 16.2a that impairments are defined by class and grade. This section states:

“The Impairment Class (IC) is determined first, by using the corresponding diagnosis-based regional grid. The grade is then determined using the adjustment grids. Once the impairment class has been determined, based on the diagnosis, the grade is initially assigned the default value, C. The final impairment grade, within the class, is calculated using the grade modifiers, or nonkey factors, as described in section 16.3. Grade modifiers include functional history, physical examination, and clinical studies. The grade modifiers are used on the net adjustment formula described in section at 16.3d to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down the default value C by the calculated net adjustment.”⁶

Using the formula above and the net adjustment formula outlined at pages 516-18 and 521-22 of the A.M.A., *Guides*, Dr. Swartz found that appellant had a class 1 default impairment. He determined that appellant had a grade 1 impairment for functional history at Table 16-6, and a grade 2 impairment for physical examination at Table 16-7; he then applied the net adjustment formula at pages 521-522 of the A.M.A., *Guides*. Using the net adjustment formula for functional history at Table 16-6 and physical examination at Table 16-7, Dr. Swartz subtracted the grade of 1 for functional history from the grade modifier of 2 for physical examination, which equaled an impairment of 1, as adjusted; this yielded a grade D impairment. Based on this calculation, he found that appellant had an adjusted 12 percent right lower extremity impairment for ruptured right quadriceps repair, moderate motion deficit and/or significant weakness.

The Board finds that appellant has 12 percent permanent impairment of his right lower extremity, as this rating was based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. As appellant did not submit any medical evidence to support an additional schedule award greater than 12 percent for the right lower extremity, the Board will affirm the Office’s August 5, 2010 decision.

⁵ *Id.*

⁶ A.M.A., *Guides* 497.

On appeal, appellant alleges that he has not been fully compensated for his pain, change in life style, and restriction of activities caused by his permanent impairment. The terms of the Act are however specific as to the method and amount of payment of compensation. Neither the Office nor the Board has the authority to enlarge the terms of the Act or to make an award of benefits under any terms other than those specified in the statute.⁷

CONCLUSION

The Board finds that appellant has no more than 12 percent permanent impairment of the right lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 5, 2010 decision be affirmed.

Issued: June 7, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁷ See *Helen A. Pryor*, 32 ECAB 1313 (1981).