

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

M.S., Appellant)	
)	
and)	Docket No. 10-1763
)	Issued: March 16, 2011
U.S. POSTAL SERVICE, POST OFFICE, Madison, WI, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2010 appellant filed a timely appeal from a May 21, 2010 schedule award 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 schedule award determination.

ISSUE

The issue is whether appellant met his burden of proof to establish more than 25 percent impairment of his left leg for which he received a schedule award.

FACTUAL HISTORY

On January 12, 2005 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim alleging that he injured his left knee on the ice and snow while in the performance of duty. On March 2, 2006 the Office accepted his claim for sprain/strain of the medial collateral ligament of the left knee. It subsequently accepted aggravation of left knee degenerative osteoarthritis, infection and inflammatory reaction due to an internal joint prosthesis on the left. On March 2, 2007 appellant underwent an authorized total left knee arthroplasty, which was

performed by his treating physician, Dr. Jeffrey R. Stitgen, a Board-certified orthopedic surgeon. On March 20, 2007 Dr. Stitgen performed a wound dehiscence on the left knee with irrigation, debridement and closure. Appellant returned to work with restrictions on the walking he could perform.

In a February 25, 2008 report, Dr. Stitgen noted that appellant's left knee was doing "fairly well." On examination, there was full extension and flexion to about 110 degrees. Appellant reported occasional pain over the lateral aspect of the knee. Dr. Stitgen recommended stretching exercises.

On July 20, 2009 appellant requested a schedule award.

In a letter dated August 24, 2009, the Office advised appellant that additional factual and medical evidence was needed to support his claim. It advised him that his physician should utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (*hereinafter*, A.M.A., *Guides*) and provide medical rationale to support an impairment rating.

In an October 9, 2009 report, Dr. Stitgen advised that appellant reached maximum medical improvement on February 25, 2008, his last office visit. Appellant had a total left knee replacement on March 20, 2007 with some permanent restrictions. Dr. Stitgen was not able to walk long distances in grass and needed a postal route that was on paved surfaces. He stated that appellant's range of motion to 110 degrees represented a loss of flexion. Appellant had occasional aching pain over the lateral side of his knee. Dr. Stitgen found that appellant had a 50 percent permanent impairment based on the total knee arthroplasty.

On February 19, 2010 the Office requested that the Office medical adviser review the medical evidence.

In a February 22, 2010 report, the Office medical adviser reviewed appellant's history of injury and medical treatment. He noted that Dr. Stitgen did not cite to any tables of the A.M.A., *Guides* to explain how he arrived at his impairment rating. The Office medical adviser noted that appellant had generally done well following his surgery. His work often required that he stand for 10 hours at a time with complaint of an occasional ache on the lateral side of the knee. The report from physical examination found that all incisions had healed, there was no evidence of infection and appellant had range of motion from 0 to 110 degrees. The Office medical adviser referred to the sixth edition of the A.M.A., *Guides*, Table 16-3, the knee regional grid. For a knee replacement, appellant fell into a Class 2 category with a fair or good result.¹ The Office medical adviser selected the default C grade that represented 25 percent impairment. He advised that there was no change to the rating with the use of the net adjustment formula. The Office medical adviser found that appellant had 25 percent impairment of to the left leg and reached maximum medical improvement on February 25, 2008, one year post surgery.

On May 21, 2010 the Office granted appellant a schedule award for 25 percent permanent impairment of the left lower extremity. The award covered 72 weeks of compensation from February 25, 2008 to July 12, 2009.

¹ A.M.A., *Guides* 511.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides*, as the appropriate standard for evaluating schedule losses.² Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008).

In addressing lower extremity impairments, the sixth edition requires 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). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).³

ANALYSIS

In a report dated October 9, 2009, Dr. Stitgen found that appellant had 50 percent impairment based on his total left knee arthroplasty. However, he did not refer to any edition of the A.M.A., *Guides*, to explain how he arrived at this conclusion. It is well established that when an attending physician's report provides an estimate of impairment with no explanation as to how the estimate is based upon the A.M.A., *Guides*, it is of reduced probative value.⁴ The Office may follow the advice of its medical adviser where he or she has properly applied the A.M.A., *Guides*.⁵

On February 22, 2010 the Office medical adviser reviewed Dr. Stitgen's findings from examination of appellant and discussed the relevant tables in the sixth edition of the A.M.A., *Guides*. He followed the assessment formula at Chapter 16, Table 16-3, the knee regional grid to rate impairment to appellant's left knee. The Office medical adviser noted that appellant fell into the category for a knee replacement, or Class 2 with a fair or good result.⁶ He selected the C value, with a default value of 25 percent impairment. The Office medical adviser noted that the findings on appellant's examination were generally unremarkable and determined the net adjustment formula did not change the impairment rating. He concluded that appellant had 25 percent impairment of the left leg. The Office medical adviser agreed that appellant reached maximum medical improvement on February 25, 2008, the date noted by Dr. Stitgen which was one year after surgery.

² 20 C.F.R. § 10.404 (2009).

³ A.M.A., *Guides* 521. See generally A.M.A., *Guides* 494-531; *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

⁴ See *L.J.*, 59 ECAB 280 (2007).

⁵ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

⁶ A.M.A., *Guides* 511.

The Board finds that the Office medical adviser's report constitutes the weight of medical opinion. The record does not contain any evidence demonstrating greater impairment to the left leg in accordance with the sixth edition of the A.M.A., *Guides*. Appellant has not established that he has more than 25 percent impairment of the left lower extremity.

The number of weeks of compensation provided under section 8107(c)(2) for 100 percent loss of use of the leg is 288 weeks.⁷ As appellant was found to have 25 percent impairment, he was appropriately awarded 25 percent of 288 weeks or 72 weeks of compensation.⁸

CONCLUSION

The Board finds that appellant has 25 percent permanent impairment of his left leg for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2011
Washington, DC

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

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

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

⁷ See 5 U.S.C. § 8107(c)(2).

⁸ See *Shalanya Ellison*, 56 ECAB 150 (2004).