United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 11-587**
	)	**Issued: November 10, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Bolton, MO, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 January 10, 2011 appellant filed a timely appeal from a December 13, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On December 29, 2005 appellant, then a 49-year-old regular city carrier, filed a traumatic injury claim alleging that he felt sharp pain in his left knee on December 28, 2005 when he stepped up to a porch. OWCP accepted the claim for left knee sprain/strain and left meniscus

[1] 5 U.S.C. §§ 8101-8193.

tear. On February 21, 2006 it authorized arthroscopic partial meniscectomy, medial left and chondroplasty, left patella and medial femoral condyle. Dr. Thomas P. Phillips, a Board-certified orthopedic surgeon who performed the surgery, noted that there was a complex tear of the posterior horn of the medial meniscus. He stated that the tear was so unstable that it had caused grade two and three damage to the medial femoral condyle over an area of approximately two centimeters. The meniscus was debrided and the remaining cartilage was stable. No other damage was found. Appellant returned to full-time regular duty on April 19, 2006. OWCP paid compensation benefits.

On December 17, 2009 appellant filed a claim for a schedule award. In a January 7, 2010 report, Dr. Phillips stated that appellant was released from his care on April 19, 2009 as maximum medical improvement was reached and he was able to return to work full duty with no restrictions. He opined that under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), appellant had five percent permanent impairment of the left knee. Dr. Phillips stated that the impairment rating was based on subjective complaints, objective physical findings and clinical impression.

On February 12, 2010 OWCP's medical adviser reviewed the medical evidence of file, including Dr. Phillips' January 7, 2010 report. Based on Dr. Phillips' report, he found appellant reached maximum medical improvement on January 7, 2010. Under the sixth edition of the A.M.A., *Guides*, OWCP's medical adviser opined that appellant had two percent impairment of the left lower extremity. Using the February 21, 2006 operative report and postoperative medical record, he found that impairment for a partial medial meniscectomy ranged from one to three percent impairment, with a default value of two percent impairment under Table 16-3, Knee Regional Grid, page 509. In his review of the medical evidence, OWCP's medical adviser found that appellant had a good result from the surgery and thus opined that the final impairment rating was two percent. In a separate report dated February 12, 2010, he indicated that Dr. Phillips' disability rating of January 7, 2010 could not be accepted for schedule award purposes under the sixth edition of the A.M.A., *Guides.*

By decision dated February 19, 2010, OWCP granted appellant two percent permanent impairment of the left lower extremity. The award ran for the period January 7 to February 16, 2010 for a total of 5.76 weeks.

On February 23, 2010 appellant, through his attorney, requested a telephonic hearing, which he later withdrew during the June 1, 2010 telephonic hearing and which OWCP's Branch of Hearings and Review accepted.

Appellant requested reconsideration on November 5, 2010. In an August 25, 2010 report, Dr. M. Stephen Wilson, an orthopedic surgeon, noted the history of injury, his review of the medical records and presented his examination findings. He opined that appellant reached maximum medical improvement. In Table 16-3, for a torn meniscus, Dr. Wilson found that appellant had a class 1 partial tear with a default value, grade C, of two percent impairment. He applied grade modifiers, including a grade 2 for physical examination due to moderate and consistent palpatory findings, and arrived at a net adjustment of +1, which shifted the default rating to grade D which was also two percent impairment. Also under Table 16-3, Dr. Wilson found that appellant had impairment for chronic recurrent knee pain with weakness throughout

range of motion. Noting grade 3 patellofemoral chondromalacia as determined intra operatively, he found a class 2 (1 mm cartilage interval as defined by grade 3 chondromalacia) impairment with a mid-range default value of 15 percent. Dr. Wilson determined that there were grade modifiers of one for Functional History (GMFH), two for Physical Examination (GMPE) and none for Clinical Studies (GMCS) under Table 16-6 and Table 16-7. He applied the net adjustment formula of (GMFH - Diagnosed Condition (CDX) (1-2) + (GMPE - CDX) (2-2) + (GMCS - CDX) (N/A) to find a net adjustment of -1, which shifted the rating to the left by one under Table 16-3 to equal 14 percent permanent impairment. Dr. Wilson combined the two impairments to find that appellant had 16 percent left leg impairment.

On November 26, 2010 OWCP's medical adviser reviewed Dr. Wilson's August 25, 2010 report and noted his two percent rating for the accepted meniscal tear. He also opined that the rating for chronic recurrent knee pain with weakness was incorrect. OWCP's medical adviser stated that the comments regarding a grade 3 chondromalacia were not contained in Dr. Phillips' February 21, 2006 operative report. He stated that Dr. Phillips' found "grade 2 or 3 damage." OWCP's medical adviser further opined that, while Dr. Wilson's comments were offered regarding the chondral findings at the time of the left knee arthroscopy, the rating provided by Dr. Phillips was actually an increase of impairment by 14 percent due to pain and weakness in range of motion. He stated that pain and weakness are considered when the Knee Regional Grid is used by applying the grade modifiers Table 16-6 and Table 17-7. Using those Tables, the impairment rating can be modified from the grid diagnosis and moved in the ranges A to E. OWCP's medical adviser opined, however, pain and weakness could not be used to argue an impairment rating using a diagnosis rating or range of motion rating. Thus, he opined that Dr. Wilson's report provided no basis to revise the left lower extremity schedule award.

By decision dated December 13, 2010, OWCP denied modification of its prior schedule award decision.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and its implementing regulations[3] 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.[4] 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

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

regulations as the appropriate standard for evaluating schedule losses.[5] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6]

The sixth edition requires identifying the impairment class for the CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[7] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[8]

It is well established that preexisting impairments to the scheduled member are to be included when determining entitlement to a schedule award.[9] OWCP procedures state that any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.[10]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to its medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.[11]

ANALYSIS

OWCP accepted that appellant sustained left knee sprain/strain and left tear meniscus while in the performance of duty on December 28, 2005. Appellant underwent arthroscopic surgery on his left knee. By decision dated February 19, 2010, OWCP granted him a schedule award for two percent impairment of the left leg based his meniscectomy. In a December 13, 2010 decision, it found that appellant was not entitled to any additional schedule award.

The Board finds that appellant is only entitled to two percent impairment of the left lower extremity. In a January 7, 2010 report, Dr. Phillips opined that appellant had five percent permanent impairment under the sixth edition of the A.M.A., *Guides.* However, he did not identify the diagnosis upon which he rated appellant's impairment or explain how any grade modifiers based on subjective complaints, objective physical findings and clinical impression

[5] *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[6] 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).

[7] A.M.A., *Guides* 494-531.

[8] *Id.* at 521.

[9] *Michael C. Milner*, 53 ECAB 446, 450 (2002); *Raymond E. Gwynn*, 35 ECAB 247 (1983).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7.a(2) (November 1998).

[11] *See id*. at Chapter 2.808.6(d) (August 2002).

were used under the sixth edition of the A.M.A., *Guides*.[12] As such, Dr. Phillips report is of limited probative value.

OWCP's medical adviser referred to the knee regional grid, Table 16-3, page 509 and determined that, for a meniscal injury with a partial medial meniscectomy or meniscus tear, appellant would be placed in a class 1 with a default value of two percent. While he did not reference any grade modifiers or indicate that he applied the net adjustment formula, he reviewed appellant's medical record and found that appellant had a good result from the surgery. As OWCP's medical adviser provided sufficient reasoning to explain his left leg impairment rating, it is in conformance with the A.M.A., *Guides.*

Appellant later submitted Dr. Wilson's August 25, 2010 report, in which Dr. Wilson opined that appellant had 16 percent left leg impairment due to the meniscectomy, two percent, and to the left leg/knee due to chronic recurrent pain with weakness noted throughout range of motion, 14 percent.[13] In arriving at his 14 percent calculation, Dr. Wilson determined, based on the operative report, that appellant had grade 3 patellafemoral chondromalacia, which he classified as a class 2 (1 mm cartilage interval as defined by grade 3 chondromalacia. OWCP's medical adviser correctly noted that the February 21, 2006 operative report by Dr. Phillips did not contain such comments regarding the chondromalacia. Instead, Dr. Phillips had noted in the operative report that the complex tear of the posterior horn of the medial meniscus had caused grade 2 and 3 damage to the medial femoral condyle over an area of approximately two centimeters. He made no "grade 3" finding with respect to rating schedule impairment under the A.M.A., *Guides.* Thus, Dr. Wilson's report is of limited probative value to support an impairment rating as his report does not conform to the A.M.A., *Guides*. Thus, the medical evidence did not support an increase in the two percent permanent impairment to the left lower extremity which appellant had already been awarded.

On appeal, appellant's attorney argues that OWCP's decision is contrary to fact and law. However, as noted above, there is no medical evidence of record supporting greater impairment than the two percent left lower extremity impairment already awarded.

Appellant may request an increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has no more than two percent total permanent impairment of the left upper extremity, which was previously paid.

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

[13] Dr. Wilson did not explain why he combined impairment from two diagnoses in the same region. The A.M.A., *Guides* also point out that, in most cases, only one diagnosis in a region will be appropriate. A.M.A., *Guides* 497.

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 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