United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 11-1000**
	)	**Issued: November 14, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, WI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 15, 2011 appellant filed a timely appeal from the February 17, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) concerning a schedule award for his left leg. 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 this case.[2]

ISSUE

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

[1] 20 C.F.R. § 8101 *et seq.*

[2] A February 17, 2011 OWCP decision concerned appellant's entitlement to schedule award compensation for his arms, but on appeal he has only contested the determination with respect to his left leg. This matter is the only subject of the present appeal.

FACTUAL HISTORY

OWCP accepted that on February 22, 2005 appellant, then a 55-year-old rural carrier, sustained a lower left leg contusion, chondromalacia of his left patella, low back strain, chest wall contusion, wrist contusion and traumatic arthritis of his right thumb due to a vehicular accident at work. It paid his compensation for periods of disability

On March 30, 2006 appellant underwent left knee arthroscopy with debridement of the lateral facet of the patella and lateral retinacular release. On March 3, 2009 Dr. Joel Wallskog, an attending Board-certified orthopedic surgeon, performed a left patellofemoral arthroplasty with prosthesis and a left knee arthroscopy with partial lateral meniscectomy. The surgical procedures were authorized by OWCP.

In a July 22, 2009 report, Dr. Wallskog stated that appellant was seen status post left knee arthroscopy and patellofemoral replacement. Appellant reported that he was off narcotics with little pain and was "[o]therwise doing great." Physical examination of his left knee revealed a well-healed left knee wound with no sign of infection. Appellant did have 1+ effusion, but his knee was stable and range of motion was from 0 to 145 degrees. X-ray testing of his left knee revealed a patellofemoral replacement in excellent position. Dr. Wallskog stated, "Overall, [appellant] is doing outstanding. He will need to be rated for [American Medical Association] disability. From the standpoint of State of Wisconsin Disabilities, permanent partial disability is 50 percent. Otherwise, I think he can work, but should not squat or kneel."

In a March 17, 2010 report, Dr. Wallskog stated that appellant presented to his office one year after left patellofemoral surgery and reported that he was doing well. Appellant could not kneel but reported that he "otherwise really has no pain" and had returned to work. Dr. Wallskog noted that physical examination of appellant's left knee revealed no effusion, a well-healed wound with no tenderness laterally and range of motion from 0 to 150 degrees. X-ray testing of appellant's left knee revealed a patellofemoral replacement in excellent position. Dr. Wallskog stated, "Overall, I think [appellant] is doing outstanding. [Appellant] should continue to work; however, he should not twist, squat or kneel, from the standpoint of his replacement. He has had an arthroplasty of his knee and according to the State guidelines, he understands this is at … 50 percent permanent partial disability."

In a June 25, 2010 report, Dr. Scott T. Hardin, an attending Board-certified physical medicine and rehabilitation physician, reported findings on examination of appellant's left knee. He noted that appellant had full range of motion of his upper and lower extremities bilaterally with the exception of his left knee, which he could only flex to about 115 degrees before noting pain and becoming hesitant. Appellant's left hamstring was 4/5 with give-way type strength.

On July 14, 2010 a physician's assistant performed an assessment of appellant's left leg impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2001). He found that appellant had a 37 percent left leg impairment under Table 16-3 which fell under the default C value of a class 3 knee replacement.[3] Under Table 16-12 for peripheral nerve impairment, appellant had an 11 percent left

[3] *See* A.M.A., *Guides* 511, Table 16-3.

leg impairment due to hamstring weakness associated with the sciatic nerve under a class 1 value which was one space to the right of the default C value.[4] These values were combined to yield a total impairment of appellant's left knee of 48 percent.

In an August 23, 2010 report, Dr. David H. Garelick, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, referenced Dr. Hardin's June 25, 2010 report for a review of appellant's medical history, including his surgical procedures, physical examination findings and diagnostic test results.[5] He agreed with Dr. Hardin's assessment of the impairment to appellant's arms and stated:

> "However, I believe he has inaccurately recommended 48 percent [left lower extremity partial permanent impairment] as it relates to residua from the isolated patellofemoral arthroplasty. Specifically, I would refer the reader to Dr. Wallskog's note dated [March 17, 2010] describing [appellant] as doing 'outstanding' as it relates to his left knee. The examination demonstrated the wound to have been well healed. There was no tenderness and the knee [range of motion] was full. X-rays showed the patellofemoral replacement to be in an excellent position. Further, he does not speak at all of any hamstring weakness. Thus, rather than the 48 percent [left lower extremity partial permanent impairment] recommended by Dr. Hardin, I would recommend an additional 25 percent [left lower extremity permanent impairment] for good result following a knee replacement."[6]

In a November 10, 2010 decision, OWCP granted appellant a schedule award for a 25 percent permanent impairment of his left leg.[7] The award was based on the August 23, 2010 opinion of Dr. Garelick, an OWCP medical adviser.

Appellant requested a review of the written record by an OWCP hearing representative. He argued that he had more than a 25 percent impairment of his left leg but did not submit any new medical evidence.

In a February 17, 2011 decision, an OWCP hearing representative affirmed the November 10, 2010 decision, finding that appellant had no more than a 25 percent permanent impairment of his left leg.

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[4] *See id.* at 535, Table 16-12.

[5] Dr. Garelick provided an opinion that appellant reached maximum medical improvement on June 25, 2010.

[6] The Board notes that the impairment ratings that Dr. Garelick apparently believed were produced by Dr. Hardin were actually produced by a physician's assistant on July 14, 2010.

[7] In its November 10, 2010 decision, OWCP also granted appellant a schedule award for a 5 percent permanent impairment of his left arm and a 13 percent permanent impairment of his right arm. As noted, appellant's arm impairment is not the subject of the present appeal.

LEGAL PRECEDENT

The schedule award provision of FECA[8] and its implementing regulations[9] 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. However, FECA 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.[10] For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.[11] It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.[12]

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[13]

ANALYSIS

OWCP accepted that on February 22, 2005 appellant sustained a lower left leg contusion, chondromalacia of his left patella, low back strain, chest wall contusion, wrist contusion and traumatic arthritis of his right thumb due to a vehicular accident at work. On March 30, 2006 appellant underwent left knee arthroscopy with debridement of the lateral facet of the patella and lateral retinacular release. On March 3, 2009 Dr. Wallskog, an attending Board-certified orthopedic surgeon, performed a left patellofemoral arthroplasty with prosthesis and a left knee arthroscopy with partial lateral meniscectomy. These procedures were authorized by OWCP.

The Board finds that appellant did not submit sufficient medical evidence to establish that he has more than a 25 percent permanent impairment of his left leg, for which he received a schedule award.

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[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404 (1999).

[10] *Id*.

[11] *See* FECA Bulletin No. 9-03 (March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

[12] *See Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b. (June 1993). This portion of OWCP procedure provides that the impairment rating of a given scheduled member should include "any preexisting permanent impairment of the same member or function."

[13] *See* A.M.A., *Guides* 509-11 (6th ed. 2009).

Before OWCP and on appeal, appellant alleged that he had greater than a 25 percent permanent impairment of his left leg. He asserted that the July 22, 2009 and March 17, 2010 reports of Dr. Wallskog established a 50 percent impairment. Dr. Wallskog advised, without adequate explanation, that appellant had a 50 percent permanent impairment under State of Wisconsin guidelines. These impairment ratings are of no probative value because he did provide a rating under the relevant standards of the A.M.A., *Guides* which have been adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses.[14] Appellant also claimed that Dr. Hardin, an attending Board-certified physical medicine and rehabilitation physician, found that he had a 48 permanent impairment in his left leg. However, this impairment rating was actually made by a physician's assistant and does not constitute probate medical opinion with respect to the extent of permanent impairment. The Board has held that the reports of a nonphysician cannot be considered by the Board in adjudicating such medical matters.[15]

The record contains a medical opinion that appellant only has a 25 percent permanent impairment of his left leg. In an August 23, 2010 report, Dr. Garelick, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, concluded that appellant had a 25 percent permanent impairment of his left leg under the standards of the sixth edition of the A.M.A., *Guides*.[16] He noted that Dr. Wallskog's March 17, 2010 report showed that appellant's knee replacement was stable and well positioned and that he had good left knee motion (0 to 150 degrees). Therefore, appellant's knee replacement warranted an impairment rating of 25 percent. Dr. Garelick advised that appellant was not entitled to an impairment rating for hamstring weakness (associated with the left sciatic nerve) because Dr. Wallskog's March 17, 2010 report did not find any such weakness.

The Board notes that Dr. Garelick's impairment rating of appellant's left knee is consistent with the relevant standards of the sixth edition of the A.M.A., *Guides* and the medical evidence of record detailing his left leg and knee conditions. Under Table 16-3, the diagnostic category of class 2 knee replacement has a default value of 25 percent. A class 2 classification is warranted when there is a "good result" from the knee replacement and knee is in "good position, stable, functional."[17] Dr. Garelick properly explained that the findings of Dr. Wallskog's March 17, 2010 report supported using this rating class.[18] He properly found that the medical evidence does not

[14] *See James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

[15] *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993).

[16] Dr. Garelick indicated that Dr. Hardin's finding of 48 percent impairment in the left leg was not warranted. Dr. Garelick appears to have been under the mistaken belief that the July 14, 2010 impairment rating in the record was produced by Dr. Hardin. As noted above, this impairment rating was actually produced by a physician's assistant.

[17] *See* A.M.A., *Guides* 511, Table 16-3. *See supra* note 13 regarding the inclusion of preexisting conditions.

[18] The Board notes that the findings of the July 22, 2009 report of Dr. Wallskog, which are similar to those found on March 17, 2010, further support using a class 2 classification for knee replacement. On July 22, 2009 Dr. Wallskog found that appellant had 0 to 145 degrees of left knee motion. In June 2010, Dr. Hardin found a lesser degree of left knee motion but this finding must be considered atypical when the medical evidence of record is considered as a whole.

show that appellant has permanent impairment due to hamstring weakness associated with the left sciatic nerve because such a peripheral nerve injury has not been accepted as related to the February 22, 2005 work injury or any other work-related cause and the fact that this finding did not present itself until June 2010 shows that it did not preexist the February 22, 2005 work injury.[19]

For these reasons, appellant has not submitted medical evidence showing that he has more than a 25 percent permanent impairment. He may request a schedule award or 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 did not meet his burden of proof to establish that he has more than a 25 percent permanent impairment of his left leg, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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

[19] *See* A.M.A., *Guides* 535, Table 16-12. *See supra* note 13 regarding the inclusion of preexisting conditions.