United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 11-224**
	)	**Issued: September 20, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Austin, TX, 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 November 4, 2010 appellant filed a timely appeal from an October 20, 2010 schedule award 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 schedule award decision.

ISSUE

The issue is whether appellant has greater than 19 percent impairment to his right leg.

FACTUAL HISTORY

On May 1, 1990 appellant, then a 37-year-old management analyst, injured his right knee while delivering mail. OWCP accepted the claim for sprain of the right knee, right lateral collateral ligament, derangement of the right lateral meniscus, derangement of the medial meniscus and sprain of the right cruciate ligament. Appellant did not stop work.

[1] 5 U.S.C. §§ 8101-8193.

OWCP also authorized surgery. On May 18, 1990 Dr. John Genung, a Board-certified orthopedist, performed arthroscopy of the right knee, debridement and removal of bone staples. He diagnosed posterior horn degenerative tear of the lateral meniscus of the right knee, medial retinacular adhesions, chondromalacia and osteophytes, medial femoral condyle and two bond staples in the proximal tibia. Dr. Genung noted that the medial meniscus had previously been excised. In reports dated May 29, 1990 to December 3, 1991, he noted that appellant was progressing well postoperatively and regained full unrestricted range of motion of the right knee. Dr. Genung continued physical therapy and light-duty restrictions.

Appellant filed a claim for a schedule award. OWCP referred his file to OWCP's medical adviser who, in a January 28, 1992 report, opined that appellant had a 19 percent impairment of the right leg in accordance with the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (A.M.A., *Guides*).[2]

In a decision dated February 7, 1992, OWCP granted appellant a schedule award for 19 percent permanent impairment of the right leg. The period of the award was September 19, 1991 to October 6, 1992.

Appellant was treated by Dr. Helo Chen, an osteopath, from April 2 to July 7, 2009, for right knee pain, swelling, popping and giving out when casing, carrying and delivering mail at work. Dr. Chen noted that he was status post surgery, injections and physical therapy. An April 24, 2009 right knee magnetic resonance imaging (MRI) scan revealed moderate degenerative changes of the knee joint, bucket handle tear of the lateral meniscus, thinning and foreshortening of the entire medial meniscus, due to severe degenerative fraying of the meniscus, chronic partial tear of the medial collateral ligament with evidence of prior surgical repair, a complete tear of the mid substance of anterior cruciate ligament and moderate joint effusion with multiple loose bodies.

From June 11 to September 29, 2009, appellant was treated by Dr. James Key, a Board-certified orthopedic surgeon, who diagnosed chronic right knee pain, lateral meniscus bucket handle tear, medial collateral ligament tear, multiple loose bodies and tear of the mid substance anterior cruciate ligament and recommended surgery. On October 23, 2009 Dr. Key performed arthroscopy of the right knee, chondroplasty of the osteochondral fracture of the medial femoral condyle on the lateral side, chondroplasty of the osteochondral fracture of the tibial plateau and chondromalacia. He diagnosed status post two prior knee reconstructions in 1970 and 1990, moderate arthritic right knee, torn right medial meniscal, torn lateral meniscus, chondral fracture of the patella, chondral fracture of the trochlea, lax anterior cruciate ligament and loose bodies of the knee.

On May 17, 2010[3] Dr. Chen performed an impairment evaluation under the sixth edition of the A.M.A., *Guides*.[4] Appellant reported right knee pain with prolonged walking, when

[2] A.M.A., *Guides* (3rd ed. 1988).

[3] The Board notes that Dr. Chen's report is dated May 17, 2009; however, this appears to be a typographical error and should be May 17, 2010. In this report Dr. Chen refers to arthroscopic surgery performed on October 23, 2009.

[4] A.M.A., *Guides* (6th ed. 2008).

performing work duties and in activities of daily living. Examination revealed an antalgic gait, multiple well-healed surgical incisions over the right knee, decreased range of motion of the right knee in flexion and extension, joint crepitus, right quadriceps muscle atrophy, significant hypertrophy of the medial and lateral femoral condyles, positive Lachman's test for grade 2 instability in the right knee and decreased strength. Dr. Chen noted clinical studies including an April 24, 2009 MRI scan of the right knee showing severe pathology, moderate degenerative changes, tear of the lateral meniscus, thinning of the entire medial meniscus, severe degenerative fraying of the meniscus, partial tear of the medial collateral ligament and a complete tear of the mid substance of anterior cruciate ligament. She diagnosed derangement of the lateral meniscus and medial meniscus, sprain of the cruciate ligament, primary osteoarthritis of the leg and sprain of the right lateral collateral ligament.

Dr. Chen noted that appellant reached maximum medical improvement. As appellant was diagnosed with a cruciate or collateral ligament injury, she referenced the Knee Regional Grid -- Lower Extremity Impairment, Table 16-3, of the A.M.A., *Guides*. Dr. Chen opined that the diagnosis was moderate, class 2. Table 16-3, page 510, of the A.M.A., *Guides*, cruciate or collateral ligament injury with moderate problems was a class 2 rating with a range of 14 to 18 percent with a default value of 16 percent. For adjustment grids, she referenced Table 16-6 for functional history and opined that a grade 2 modifier was warranted due to appellant's symptoms of pain and difficulty with normal activity, use of medication to control symptoms, the ability to perform self-care activities with modification and trouble walking up and down stairs and for prolonged periods. Dr. Chen stated that a physical examination modifier was not applicable as physical examination was used to determine the class of diagnosis. She noted that, for clinical studies, a grade 3 modifier was warranted as diagnostic testing documented severe pathology including post-traumatic arthrosis. Dr. Chen applied the net adjustment formula to the grade modifiers to arrive at a net adjustment of one. This moved the default grade C impairment to grade D for which provides for 17 percent leg impairment.

On July 31, 2010 appellant claimed an additional schedule award.

In an August 26, 2010 report, an OWCP medical adviser reviewed Dr. Chen's May 17, 2010 report and agreed with her conclusion that appellant had 17 percent impairment of the right leg. The medical consultant noted a diagnosis of cruciate or collateral ligament laxity, under the Knee Regional Grid -- Lower Extremity Impairment, Table 16-3, page 509-11, of the A.M.A., *Guides*. He noted that appellant's diagnosis was class 2, a moderate problem. A class 2 rating for cruciate or collateral ligament laxity using Table 16-3, page 510 had a default rating of 16 percent leg impairment. In assigning modifiers, OWCP's medical adviser noted Dr. Chen's findings and advised that, for functional history, Table 16-6, page 516, appellant was grade 2. For physical examination, Table 16-7, page 517, appellant was grade 2. For clinical studies, Table 16-8, page 519, appellant was grade 3. The medical adviser applied the net adjustment formula, which yielded a net adjustment of one and found that which moved the default grade C to D, for which 17 percent lower extremity impairment is provided. As appellant previously received a schedule award for 19 percent right leg impairment attributable to his knee condition, the medical adviser opined that he had no additional impairment.

On October 20, 2010 OWCP denied appellant's claim for an additional schedule award. As appellant was previously granted 19 percent permanent impairment of the right lower extremity, the medical evidence did not support additional award.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing federal regulations,[6] 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[7] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[8]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[9] Under the sixth edition, for lower extremity impairments the evaluator identifies 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).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.[12]

ANALYSIS

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.[13] Appellant's accepted diagnosed conditions of sprain of the right knee, right lateral

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id.* at § 10.404(a).

[8] FECA Bulletin No. 09-03 (issued March 15, 2009).

[9] A.M.A., *Guides*, 3-6 (6th ed. 2008).

[10] *Id.* at 494-531.

[11] *Id.* at 521.

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

[13] *Supra* notes 10, 11.

collateral ligament, derangement of the right lateral meniscus, derangement of the medial meniscus and sprain of the right cruciate ligament. On October 20, 2010 OWCP denied his claim for an additional award. It noted that on January 28, 1992 appellant was granted a schedule award for 19 percent permanent impairment of the right lower extremity and was not entitled to a greater award.

By report dated May 17, 2010, Dr. Chen discussed the relevant tables in the sixth edition of the A.M.A., *Guides*. As explained, she followed the assessment formula of the sixth edition of the A.M.A., *Guides* and advised that, in accordance with Chapter 16, for a cruciate or collateral ligament laxity, appellant had 17 percent impairment of the right lower extremity.

OWCP's medical adviser reviewed Dr. Chen's report and agreed with her conclusion that appellant had 17 percent impairment of the right leg. He noted that in accordance with Chapter 16, for a cruciate or collateral ligament laxity, using Table 16-3, Knee Regional Grid, appellant would fit a class 2 category, yielding a default grade C for 16 percent impairment.[14] The medical adviser then determined whether there were any applicable grade adjustments. These include adjustments for GMFH, GMPE and GMCS. The grade modifiers are used in the net adjustment formula to calculate a net adjustment.[15] The final impairment grade is determined by adjusting the grade up or down from the default value C by the calculated net adjustment. OWCP's medical adviser noted Dr. Chen's findings and noted a functional history grade modifier of two, a physical examination grade modifier of two and a clinical studies grade modifier of three.[16] Applying the net adjustment formula resulted in a modifier of one, which resulted in a grade adjustment from C to D.[17] The corresponding lower extremity impairment for a class 2, grade D cruciate or collateral ligament injury is 17 percent.[18]

The Board finds that Dr. Chen and OWCP's medical adviser properly applied the A.M.A., *Guides* to rate impairment to appellant's right lower extremity. Each physician explained how his impairment rating was determined and each physician found that he had 17 percent right leg impairment under the A.M.A., *Guides*. As appellant previously received a schedule award for 19 percent impairment of the right leg due to his right knee condition, he is not entitled to an additional schedule award pursuant to the A.M.A., *Guides*.

[14] A.M.A., *Guides* 509-11, Table 16-3.

[15] *Id*. at 521.

[16] *Id.* at 516-19.

[17] Using the formula at page 521 of the A.M.A., *Guides*, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) results in the following: (2-2) + (2-2) + (3-1) = 1. The Board notes that Dr. Chen advised that a grade modifier for physical examination was not applicable as physical examination was used to determine class. *See* A.M.A., *Guides* 521 (if a particular criterion was used to determine impairment class, it may not be used again to determine the grade). As noted, OWCP's medical adviser assigned a grade modifier of two for physical examination. The Board finds that any error is harmless as application of the net adjustment formula using Dr. Chen's grade modifiers, which exclude a modifier for physical examination, also results in a grade adjustment of one (2-2) + (3-1) = 1.

[18] *Id.* at 511, Table 16-3.

On appeal, appellant asserts that he underwent three surgeries due to the prolonged standing and walking he performed as a letter carrier and was entitled to a greater award than 17 percent impairment. He disagreed with OWCP's finding that his impairment had declined as he aged. The Board notes that OWCP has adopted the standards of the sixth edition of the A.M.A., *Guides*, effective May 1, 2009, for evaluating permanent impairment.[19] As noted, both OWCP's medical adviser and Dr. Chen explained appellant's rating under the sixth edition of the A.M.A., *Guides.* The evidence does not establish any greater impairment than that for which appellant previously received a schedule award.

Appellant 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 has no more than 19 percent right lower extremity impairment for which he has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 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

[19] *Supra* note 8.