United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 11-1661**
	)	**Issued: April 25, 2012**
DEPARTMENT OF THE AIR FORCE, AIR NATIONAL GUARD, NEW JERSEY NATIONAL GUARD, Fort Dix, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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 July 8, 2011 appellant, through his attorney, filed a timely appeal from an April 12, 2011 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 met his burden of proof to establish that he is entitled to a schedule award greater than the two percent previously awarded for his left lower extremity.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On October 6, 2006 appellant, then a 39-year-old air craft mechanic, injured his left knee while working underneath an aircraft. OWCP accepted a tear of the medial meniscus of the left knee. Appellant stopped work on October 6, 2006.

A magnetic resonance imaging (MRI) scan of the left knee revealed a meniscal tear of the posterior horn of the medial meniscus and a large suprapatellar joint effusion. OWCP authorized surgery. On November 22, 2006 Dr. Charles C. Rizzon, a Board-certified orthopedist, performed arthroscopic surgery of the left knee with a partial medial meniscectomy, chondroplasty of the medial femoral condylar lesion and synovectomy. He diagnosed left bucket handle medial meniscal tear, synovitis and chondral injury of the medial femoral condyle. In reports dated December 1, 2006 to September 25, 2007, Dr. Rizzo noted that appellant was progressing well postoperatively and could return to work with restrictions on February 1, 2007. He noted appellant's complaints of persistent pain and limited function of the left knee.

On December 20, 2007 appellant filed a claim for a schedule award. He submitted a September 24, 2007 report from Dr. David Weiss, an osteopath, who opined that appellant sustained an 11 percent impairment of the left lower extremity under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (A.M.A., *Guides*).[2] An MRI scan of the left knee dated May 19, 2008 revealed medial meniscal tear, osteochondral defect involving the patellar cartilage and slight cartilage loss in the medial joint space.

On May 22, 2009 OWCP requested Dr. Weiss submit an assessment of permanent impairment in accordance with the A.M.A., *Guides* (6th ed. 2009), which OWCP began using effective May 1, 2009. No supplemental report was received.

On September 15, 2009 OWCP referred appellant for a second opinion to Dr. Aldo Iulo, a Board-certified orthopedist, for a determination of whether appellant had permanent impairment attributable to his accepted conditions. In a September 30, 2009 report, Dr. Iulo noted a history of appellant's work-related condition and subsequent treatment. He noted examination findings of the left knee of a well-healed arthroscopic incision medially and laterally, no patellofemoral crepitus, mild atrophy of the left quadriceps, no tenderness over the medial and lateral collateral ligaments, extension of the left knee was complete, negative McMurray's test of the medial and lateral meniscus, negative Lachman's test, no anterior or posterior instability and no medial or lateral collateral ligament instability. Dr. Iulo diagnosed postarthroscopic partial medial meniscectomy and chondroplasty of the left knee. He noted that appellant reached maximum medical improvement. Dr. Iulo noted left knee motion of 130 degrees and mild atrophy of the left thigh with pain when squatting. He opined that appellant had 15 percent impairment of the left lower extremity for partial medial meniscectomy with residual atrophy of the left quadriceps muscle.

OWCP referred Dr. Iulo's report and the case record to an OWCP medical adviser for evaluation as to the extent of permanent impairment of the left leg in accordance with A.M.A.,

[2] A.M.A., *Guides* (5th ed. 2001).

Guides. In a December 30, 2009 report, the medical adviser noted that Dr. Iulo found 15 percent impairment of the left leg but did not cite to tables, class, grade modifiers or pages in the A.M.A., *Guides* to support his impairment rating. The medical adviser determined that appellant was a class 1, grade C, with a default impairment value of two percent pursuant to Table 16-3, page 509 of the A.M.A., *Guides*.[3] He noted that even with the application of significant grade modifiers the default value would be no greater than 3 percent and was unclear as to how Dr. Iulo determined an impairment rating of 15 percent. The medical adviser asked OWCP to obtain an addendum report from Dr. Iulo, which provided an explanation of his impairment determination showing his calculation and citing to tables and charts.

On February 22, 2010 OWCP requested an addendum report from Dr. Iulo explaining his impairment determination. In a March 18, 2010 report, Dr. Iulo noted that appellant had five percent impairment of the left leg pursuant page 509 of the A.M.A., *Guides*,[4] due to a partial medial meniscectomy with persistent complaints of pain and atrophy of the quadriceps. He noted that appellant was "[c]lass 1, [g]rade 2."

OWCP referred Dr. Iulo's report and the case record to an OWCP medical adviser who in a report dated June 1, 2010 opined that appellant had two percent impairment of the left leg in accordance with the A.M.A., *Guides*. The medical adviser found that appellant had a class 1 impairment, the rating utilized for a mild problem for right knee, status post partial medial meniscectomy, with a default impairment value of two percent leg impairment. The medical adviser determined that grade modifier for functional history was 1, pursuant to Table 16-6, (for intermittent symptoms, avoiding kneeling and squatting); the grade modifier for physical examination was 1, pursuant to Table 16-7, for a mild problem (mild atrophy); and the grade modifier for clinical studies was 1, pursuant to Table 16-8, for a mild problem as supported by an MRI scan. He applied the modifiers for Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS) found in Table 16-6, Table 16-7 and Table 16-8 and determined that there was no change in the default rating of two percent impairment after applying the net adjustment formula.[5] The medical adviser noted that Dr. Iulo did not explain his calculation of five percent impairment and did not cite to tables or grade modifiers in the A.M.A., *Guides*. He correlated Dr. Iulo's findings in his report to the A.M.A., *Guides* and opined that appellant sustained a two percent impairment of the left lower extremity. The medical adviser noted that the date of maximum improvement was September 30, 2009.

In a decision dated July 16, 2010, OWCP granted appellant a two percent permanent impairment of the left lower extremity. The period of the award was September 30 to November 9, 2009.

On July 22, 2010 appellant requested an oral hearing which was held on January 25, 2011.

[3] *Id*. at 509.

[4] *Id.* at 521-22.

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

In an April 12, 2011 decision, OWCP affirmed the July 16, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA[6] and its implementing federal regulations[7] 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.[8] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[9]

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).[10] 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 GMFH, GMPE and GMCS.[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with an OWCP medical adviser providing rationale for the percentage of impairment specified.[13]

ANALYSIS

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments are to be classified by diagnosis. The classification is then adjusted by grade modifiers according to the formula noted above.[14] Appellant's accepted diagnosed condition was a tear of the medial meniscus of the left knee. He filed a claim for a schedule award and submitted Dr. Weiss' September 24, 2007 report who found 11 percent left leg impairment under the fifth edition of

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id.* at § 10.404(a).

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

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

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

[12] *Id.* at 521.

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

[14] *Supra* notes 11, 12.

the A.M.A., *Guides.* On May 22, 2009 OWCP requested that Dr. Weiss assess permanent impairment under the sixth edition of the A.M.A., *Guides*. Dr. Weiss did not respond and OWCP properly referred appellant to Dr. Iulo.

However, the Board finds that Dr. Iulo did not clearly explain his conclusion regarding appellant's left leg impairment in his September 30, 2009 and March 18, 2010 reports. In his September 30, 2009 report, Dr. Iulo noted no patellofemoral crepitus, mild atrophy of the left quadriceps, no tenderness over the medial and lateral collateral ligaments, no anterior or posterior instability and no medial or lateral collateral ligament instability. He opined that appellant had 15 percent impairment of the left leg for partial medial meniscectomy with residual atrophy of the left quadriceps. Dr. Iulo however did not specifically indicate how appellant's findings correlated to a 15 percent impairment rating according to the A.M.A., *Guides.* OWCP requested a supplemental report from Dr. Iulo, instructing him to explain his impairment calculation. In a March 18, 2010 report, Dr. Iulo noted that appellant had five percent impairment of the left leg pursuant page 509 of the A.M.A., *Guides*. He noted that appellant had a history of a partial medial meniscectomy with persistent complaints of pain and atrophy of the quadriceps and would be a class 1, grade 2, pursuant to the A.M.A., *Guides,* but he did not explain his calculation. Dr. Iulo did not state what diagnosis he used on page 509 of the A.M.A., *Guides* and he did not identify grade modifiers for appellant's condition or apply the grade modifiers to the net adjustment formula set forth in the A.M.A., *Guides*.[15] Thus, his supplemental report did not explain precisely how he arrived at five percent leg impairment under the A.M.A., *Guides.* Dr. Iulo's reports are of little probative value.[16] An OWCP medical adviser reviewed his findings and noted that he again did not explain his calculation. The medical adviser attempted to use Dr. Iulo's findings to rate impairment but, as noted, he arrived at a two percent impairment calculation for the left leg under the A.M.A., *Guides* and was unable to determine how Dr. Iulo may have calculated impairment based on his stated findings. Consequently, the medical evidence is insufficiently developed to properly determine the degree of appellant's left leg permanent impairment.

The Board has held that, once OWCP starts to procure medical opinion, it must do a complete job. OWCP has the responsibility to obtain from its referral physician an evaluation that will resolve the issue involved in the case.[17] Here, it did not obtain a report from Dr. Iulo that sufficiently explains how he calculated appellant's left leg permanent impairment under the A.M.A., *Guides*. The Board will set aside OWCP's April 12, 2011 decision and remand the case for proper development of the medical evidence which includes appellant's referral to an appropriate Board-certified specialist for the purpose of securing a reasoned medical opinion which addresses and explains the extent of his left leg impairment pursuant to the A.M.A., *Guides*. After such further development as may be necessary, OWCP shall issue an appropriate merit decision on appellant's entitlement to schedule compensation for the left lower extremity.

[15] *Id.* at 516-19, 521.

[16] *See Carl J. Cleary*, 57 ECAB 563, 568 n.14 (2006) (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 impairment).

[17] *A.R.*, Docket No. 11-692 (issued November 18, 2011); *Richard F. Williams*, 55 ECAB 343 (2004); *see Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2011 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this opinion.

Issued: April 25, 2012
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