United States Department of Labor
Employees' Compensation Appeals Board

T.R., Appellant	)	
and	)	**Docket No. 11-1734**
	)	**Issued: April 20, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, 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 July 21, 2011 appellant filed a timely appeal from a June 7, 2011 decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. 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 this case.[2]

ISSUE

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

On appeal, appellant contends that the evaluation performed by Dr. Ellen Woelfel Price, an osteopath Board-certified in physical medicine and rehabilitation and pain medicine, was not

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the June 7, 2011 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

a second opinion. He requested a second opinion by an orthopedic surgeon to rate permanent impairment.

FACTUAL HISTORY

OWCP accepted that on March 3, 2009 appellant, then a 45-year-old distribution clerk, sustained a right knee medial collateral ligament (MCL) sprain and a tear of the medial meniscus of the right knee while pulling a large piece of equipment in the performance of duty. On April 22, 2009 Dr. Thomas P. Moore, an attending Board-certified orthopedic surgeon, performed a chondroplasty of patella, partial medial meniscectomy and chondroplasty of lateral tibial plateau the right knee. In an August 11, 2009 report, he found that appellant had reached maximum medical improvement and returned to his regular job without restrictions. Dr. Moore opined that, according to the third edition, revised, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a 10 percent impairment of the right lower extremity.

By letter dated February 8, 2010, OWCP informed appellant that it could not use Dr. Moore's August 11, 2009 impairment rating to determine his eligibility for a schedule award. As of May 1, 2009, all schedule awards issued by OWCP were to be based on an impairment rating performed under the sixth edition of the A.M.A., *Guides*. OWCP advised appellant to obtain an impairment rating from Dr. Moore referencing the sixth edition of the A.M.A., *Guides* if he wished to pursue his claim.

On October 15, 2010 appellant filed a claim for a schedule award. He resubmitted Dr. Moore's impairment rating dated August 11, 2009 based on the third edition, revised of the A.M.A., *Guides*.

In a November 5, 2010 report, an OWCP medical adviser reviewed the medical record. He was unable to make a determination as to the extent of appellant's impairment or date of maximum medical improvement.

OWCP referred appellant, together with a statement of accepted facts and medical records, to Dr. Price. In a February 18, 2011 report, Dr. Price opined that he had two percent permanent impairment based on the sixth edition of the A.M.A., *Guides*. She conducted an objective physical and neurological examination and found that appellant's cranial nerves 2 through 12 were grossly intact, muscle stretch reflexes were 2/4 in both upper and lower extremities, sensations were intact to light touch and pinprick and he had a slight gait disorder but it was quite minimal. Appellant had no foot drop, no Romberg's and negative Trendelenburg. He was able to toe walk and heel walk without difficulty. There was no calf girth atrophy and no atrophy of the muscles in the feet and no atrophy in the thigh. Appellant had no pain with straight-leg raising in a seated or supine position. He had no evidence of any instability of the knee, negative Lachman's, negative McMurray's and normal Q angle. Dr. Price diagnosed history of right knee problem and found evidence of moderate residual pain. She assigned appellant to class 1 due to his meniscal tear and class 1 for functional history due to a mild antalgic gait and a shortened stance, which gave him a net zero. Appellant's physical examination was also a class 1 which was a mild problem, showing minimal palpatory findings and some laxity at the patella but no alignment issue and no evidence of any muscle atrophy.

Dr. Price opined that clinical signs placed him into class 1 which was a mild problem. X-rays did not show any significant abnormality and there was less than a 10 degree angulation of the knee. Therefore, according to Dr. Price, appellant fit into the default of 2 which equated to two percent right lower extremity impairment.

An OWCP medical adviser reviewed the medical record on March 29, 2011 and determined that the date of maximum medical improvement was February 18, 2011, the date of the examination by Dr. Price. The medical adviser concurred with her impairment rating. According to Table 16-3,[3] appellant's "[g]rade 2 to 3" articular cartilage abnormality of the patella and "[g]rade 2 to 3" articular cartilage abnormality of lateral tibial plateau did not warrant an impairment rating. The medical adviser assessed a "[g]rade 2 to 3" medial meniscus tear status post partial medial meniscectomy according to Table 16-3 and assigned appellant into class 1 with the default grade C equal to two percent lower extremity impairment. Utilizing Table 16-6,[4] he assigned a grade modifier 1 for Functional History (GMFH) in agreement with Dr. Price as the rating report did not document an antalgic gait requiring the use of a single gait aid or external orthotic device for stabilization and no documentation of a positive Trendelenburg. Referring to Table 16-7,[5] the medical adviser assigned a grade modifier 1 for Physical Examination (GMPE) for some mild pain to palpation and mild laxity of the patella. He assigned a grade modifier 1 for Clinical Studies (GMCS) as the clinical studies were not applicable in this case, according to Table 16-8.[6] The medical adviser explained that appellant's x-rays did not show any significant abnormalities, but would not have characterized what the soft tissue of the knee would look like status post surgery and therefore were not specific for the condition of meniscal and cartilage damage. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), an OWCP medical adviser found that (1-1) + (1-1) + (1-1) resulted in a net grade modifier of 0, resulting in an impairment class 1, grade C, equaling a two percent permanent impairment of the right lower extremity.

By decision dated June 7, 2011, OWCP granted appellant a schedule award for two percent impairment of the right lower extremity. The award ran for 5.76 weeks for the period February 18 to March 30, 2011.

LEGAL PRECEDENT

The schedule award provisions of FECA[7] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA,

[3] Table 16-3, pages 509-511 of the sixth edition of the A.M.A., *Guides* is entitled *Knee Regional Grid – Lower Extremity Impairments.*

[4] Table 16-6, page 516 of the sixth edition of the A.M.A., *Guides* is entitled Functional History Adjustment – Lower Extremity Impairments.

[5] Table 16-7, page 517 of the sixth edition of the A.M.A., *Guides* is entitled Physical Examination Adjustment – Lower Extremity Impairments.

[6] Table 16-8, page 519 of the sixth edition of the A.M.A., *Guides* is entitled Clinical Studies Adjustment – Lower Extremities.

[7] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[8] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[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 (ICF), Disability and Health.[10] Under the sixth edition, 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 - DCX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[12]

ANALYSIS

OWCP accepted that appellant sustained a right knee MCL sprain and a tear of the medial meniscus of the right knee on March 3, 2009. Appellant underwent a chondroplasty of patella, partial medial meniscectomy and chondroplasty of lateral tibial plateau the right knee on April 22, 2009. He claimed a schedule award on October 15, 2010. As the impairment rating of Dr. Moore was not in accordance with the sixth edition of the A.M.A., *Guides,* it was found to be of diminished probative value.

In order to determine the extent and degree of any permanent impairment, OWCP referred appellant to Dr. Price, who examined him on February 18, 2011. Dr. Price concluded that he had a two percent impairment of the right leg. In accordance with its procedures, OWCP properly referred the evidence of record to an OWCP medical adviser who, in a March 29, 2011 report, reviewed the clinical findings of Dr. Price and agreed that appellant's "[g]rade 2 to 3" medial meniscus tear status post partial medial meniscectomy reported by her was a class 1 with the default grade C according to Table 16-3 of the sixth edition of the A.M.A., *Guides*. The medical adviser concurred with Dr. Price's February 18, 2011 findings of a GMFH of 1 for lack of documentation of an antalgic gait or a positive Trendelenburg according to Table 16-6, a

[8] *See Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[9] 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).

[10] A.M.A., *Guides* (6th ed., 2009), page 3, section 1.3, The of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[11] A.M.A., *Guides* (6th ed., 2009), pp. 494-531.

[12] *See R.V.*, Docket No. 10-1827 (issued April 1, 2011).

GMPE of 1 for some mild pain to palpation and mild laxity of the patella according to Table 16-7 and a GMCS of 1 as the clinical studies were not applicable in this case according to Table 16-8. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), an OWCP medical adviser found that (1-1) + (1-1) + (1-1) resulted in a net grade modifier of 0, resulting in an impairment of class C, equaling a two percent permanent impairment of the right lower extremity.

The Board finds that an OWCP medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Price's clinical findings. The medical adviser's calculations were mathematically accurate. There is no medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides* to establish greater permanent impairment. The medical adviser explained that Dr. Moore's assessment of a 10 percent right lower extremity impairment was based erroneously on the third edition, revised of the A.M.A., *Guides*. Therefore, OWCP properly relied on an OWCP medical adviser's assessment of a two percent impairment of the right lower extremity.[13]

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.

On appeal, appellant contends that the evaluation performed by Dr. Price was not a second opinion and requested examination by an orthopedic surgeon. The Board finds that OWCP properly referred him to Dr. Price for a second opinion evaluation which was conducted on February 18, 2011. OWCP advised appellant that, as Dr. Moore's report contained a rating based on an outdated edition of the A.M.A., *Guides*, it was insufficient upon which to base a schedule award.[14] Dr. Price reviewed the evidence of record, conducted an objective physical examination and a neurological examination and applied the appropriate edition of the A.M.A., *Guides*. For these reasons, the Board finds that the evaluation performed by Dr. Price was that of a second opinion and appellant's argument is not substantiated.

CONCLUSION

The Board finds that appellant has not established that he sustained more than a two percent impairment of the right lower extremity, for which he received a schedule award.

[13] *See M.T.*, Docket No. 11-1244 (issued January 3, 2012).

[14] *See* 20 C.F.R. § 10.320 which provides in pertinent part: "OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary." *See also supra* note 9 at Chapter 3.500.3 (December 1994).

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2012
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