United States Department of Labor
Employees' Compensation Appeals Board

R.V., Appellant	)	
and	)	**Docket No. 11-1179**
	)	**Issued: January 11, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Lancaster, SC, Employer	)	

Appearances:
Greg Dixon, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 15, 2011 appellant, through his representative, filed a timely appeal from a January 6, 2011 merit 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 schedule award issue.

ISSUE

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

FACTUAL HISTORY

On July 19, 2010 appellant, then a 46-year-old city carrier, filed an occupational disease claim alleging that he sustained a left medial meniscal tear and anterior cruciate ligament injury as a result of prolonged standing, twisting and walking. He became aware of his condition on

[1] 5 U.S.C. § 8101 *et seq.*

March 1, 2005 and realized its relationship to his federal employment on June 21, 2010. Magnetic resonance imaging scans of the left knee obtained on April 10, 2006 and May 15, 2009 by Drs. Martin P. Dommers, Jr. and Geoffrey T. Gilleland, Board-certified diagnostic radiologists, showed medial meniscal defects.

Appellant underwent arthroscopic surgery on June 24, 2010, which was performed by Dr. William L. Lehman Jr., a Board-certified orthopedic surgeon.[2] In a June 24, 2010 operative report, Dr. Lehman noted evidence of a previous medial meniscectomy at the posterior horn that was "quite substantial." He categorized the procedure as arthroscopic partial medial meniscectomy and noted that he "trimmed back the posterior horn of the medial meniscus until the residual rim was smooth and stable." Dr. Lehman stated that he "ended up … with essentially a total posterior horn medial meniscectomy in the posterior area." In a June 28, 2010 postoperative report, he advised that extensive walking on the job may cause additional damage. Appellant returned to work on July 13, 2010.

On July 29, 2010 OWCP accepted appellant's claim for torn left medial meniscus.[3]

In a September 21, 2010 report, Dr. Lehman related that appellant was on modified full-time duty since September 13, 2010, but continued to experience left anteromedial knee pain. On examination, he observed crepitus that was consistent with chondromalacia, questionable synovitis, satisfactory range of motion (ROM) and a nonantalgic gait. Applying Table 16-3 (Knee Regional Grid) on page 509 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[4] (hereinafter A.M.A., *Guides*), namely the rating scheme for total medial meniscectomy, Dr. Lehman assigned an impairment class (CDX) of one with a default grade of C, or a seven percent impairment rating. Based on his finding of chondromalacia of the medial femoral condyle, he increased the rating to eight percent.

Appellant filed a claim for a schedule award on October 1, 2010.

In an October 6, 2010 report, Dr. Howard P. Hogshead, OWCP's medical adviser and a Board-certified orthopedic surgeon, disagreed with Dr. Lehman's eight percent impairment rating. He specified that the June 24, 2010 operative report labeled appellant's procedure as arthroscopic partial medial meniscectomy. Dr. Hogshead also pointed out that appellant's chondromalacia and previous left knee surgeries were not accepted by OWCP as compensable. Applying Table 16-3 on page 509 of the A.M.A., *Guides*, in particular the rating scheme for partial medial meniscectomy, he assigned a CDX of one with a default grade of C, or a two percent impairment rating. In view of appellant's complaints of pain as well as the satisfactory ROM and gait demonstrated during Dr. Lehman's evaluation, Dr. Hogshead noted grade modifier values of two for Functional History (GMFH) and one for Physical Examination (GMPE). He found the grade modifier for Clinical Studies (GMCS) to be inapplicable. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX), or (2 - 1) + (1 - 1),

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[2] The case record indicates that appellant previously underwent two operations on the left knee in June 2005 and April 2006.

[3] Appellant received disability compensation for the period June 24 to July 12, 2010.

[4] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008).

Dr. Hogshead calculated a net adjustment of zero. He concluded that appellant sustained a class 1, grade C impairment of the left lower extremity, which amounted to a two percent rating.[5] Dr. Hogshead listed September 21, 2010 as the date of maximum medical improvement.

In an October 18, 2010 report, Dr. Lehman acknowledged that chondromalacia was not an accepted condition, but maintained that appellant sustained a seven percent permanent impairment of the left lower extremity:

> "[Appellant] has had two previous arthroscopies dealing with a similar issue, in June 2005 and April 2006. The anterior horn was essentially gone from the previous procedure, and I performed basically a complete posterior horn medial meniscectomy [on June 24, 2010], removing whatever remained. There thus is now a total meniscectomy medially."

In a November 15, 2010 report, Dr. Hogshead disagreed with Dr. Lehman's revised seven percent impairment rating. He asserted that the latter's description of the June 24, 2010 surgery in his operative report, namely that the posterior horn of the medial meniscus was trimmed until the residual rim was smooth and stable, showed that a portion of the meniscus was left. Dr. Hogshead added that an open arthrotomy, as opposed to an arthroscopy, represented a "true" total meniscectomy.

In a December 1, 2010 report, Dr. Lehman opined that appellant's impairment rating "should be equivalent to … what would normal[ly] qualify for a total meniscectomy." He elaborated:

> "I believe that the assessment of the impairment relates to the function of the meniscus. [Appellant] has undergone two prior medial meniscectomies and the procedures I performed was the third, and I would estimate that easily 90 percent of the meniscus is now absent from the knee. Although a rim remains, the function in terms of shock absorption and stability of the knee is now completely gone. The residual symptoms at the knee relates substantially to the increased concentration of stress across the weight bearing surface given the complete lack of cushioning. [Appellant] now has the same risk for premature development of osteoarthritis, because of the meniscectomies, as would someone with a "true" total meniscectomy."

Dr. Hogshead remarked in a December 14, 2010 report that a total meniscectomy involved the resection of the entire meniscus. He reiterated that Dr. Lehman's account of the June 24, 2010 arthroscopy in his operative report and subsequent letters did not meet this standard.

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[5] The Board notes that the net adjustment was actually one, resulting in a class 1, grade D impairment of the left lower extremity. Nevertheless, according to Table 16-3 of the A.M.A., *Guides*, grade D impairment remains at two percent.

By decision dated January 6, 2011, OWCP granted a schedule award for two percent permanent impairment of the left lower extremity for the period September 21 to October 31, 2010.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss of or loss of use of scheduled members or functions of the body.[6] 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.[7]

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). 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. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (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.[8]

ANALYSIS

The Board finds that the case is not in posture for decision due to a conflict in medical opinion necessitating a referral to an impartial medical specialist.[9]

Dr. Lehman initially identified appellant's June 24, 2010 procedure as arthroscopic partial medial meniscectomy of the left knee. However, he detailed in his contemporaneous operative report that he essentially performed total posterior horn medial meniscectomy as he trimmed the posterior horn until only a residual rim remained. On October 18, 2010 Dr. Lehman advised that appellant had two previous arthroscopies with the anterior horn essentially gone from those previous procedures while he performed basically a complete posterior horn medial meniscectomy June 24, 2010, removing whatever remained. He opined that there "is now a total meniscectomy medially." Dr. Lehman further explained in a December 1, 2010 report that the knee no longer possessed stability and shock absorption following multiple medial meniscectomies since June 2005 and that appellant was as susceptible to developing premature osteoarthritis as an individual who underwent a "true" total meniscectomy. Based on these

[6] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[7] *K.H.*, (Docket No. 09-341, issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, (Docket No. 09-2231, issued May 14, 2010).

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

[9] *See Paul J. Navarette*, (Docket No. 05-895, issued July 11, 2005).

observations, he used the A.M.A., *Guides*' rating scheme for total medial meniscectomy and assigned a seven percent impairment rating.

On the other hand, Dr. Hogshead opined that appellant underwent arthroscopic partial medial meniscectomy of the left knee. He noted in various reports from October 6 to December 14, 2010 that Dr. Lehman expressly labeled the June 24, 2010 operation as arthroscopic partial medial meniscectomy and did not otherwise indicate that a complete excision of the medial meniscus took place. Dr. Hogshead consequently applied the A.M.A., *Guides*' rating scheme for partial medial meniscectomy and assigned a two percent impairment rating, which was thereafter adopted by OWCP in its January 6, 2011 decision.

The Board finds that a conflict in medical opinion exists between Drs. Lehman and Hogshead as to the extent of permanent impairment of appellant's left lower extremity as they could not agree on whether partial or total medial meniscectomy was performed.[10] If there is a conflict in medical opinion between the employee's physician and the physician making the examination for the United States, OWCP shall appoint a third physician, known as a referee physician or impartial medical specialist, to make what is called a referee examination.[11] To resolve the present matter, OWCP shall remand the case, refer appellant for a referee examination, together with the medical record and a statement of accepted facts, to an appropriate Board-certified specialist and obtain a rationalized medical opinion regarding whether for impairment rating purposes appellant has a total medial meniscectomy of the left knee and to rate the extent of permanent impairment of the left lower extremity. After conducting such further development as it may find necessary, OWCP shall render an appropriate decision.

On appeal, appellant's representative asserts that Dr. Lehman's rating should be used to establish appellant's permanent impairment. As explained, the Board finds that the case is not in posture for decision due to a conflict in the medical evidence and must be remanded to an appropriate specialist to resolve the medical conflict.

CONCLUSION

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

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[10] *See id.*

[11] *See* 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321. *See also R.A.*, (Docket No. 09-552, issued November 13, 2009).

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 11, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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