United States Department of Labor
Employees' Compensation Appeals Board

E.E., Appellant	)	
and	)	**Docket No. 11-1586**
	)	**Issued: March 5, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Gretna, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 20, 2011 appellant filed a timely appeal from a December 22, 2010 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 20 percent permanent impairment of the right lower extremity for which she received a schedule award.

FACTUAL HISTORY

On October 29, 2000 appellant, then a 31-year-old window clerk, filed a Form CA-2 for an occupational disease for a swollen right knee. OWCP accepted the claim for aggravation of

[1] 5 U.S.C. § 8101 *et seq.*

preexisting right knee synovitis and popliteal cyst.[2] An August 10, 2009 magnetic resonance imaging scan obtained by Dr. John M. Vitter, a Board-certified radiologist, exhibited right knee osteoarthritis, complex lateral meniscal tear, grade 2 linear intrameniscal signal in the posterior horn of the medial meniscus, grade 1 medial collateral ligament strain, joint effusion and septated popliteal cyst.[3]

Appellant filed a claim for a schedule award on October 30, 2009.[4] On November 10, 2009 OWCP advised her of the medical evidence needed to establish permanent impairment. On July 14, 2010 appellant asked that it refer her for an impairment rating.

OWCP referred appellant for a second opinion examination to Dr. Christopher E. Cenac, a Board-certified orthopedic surgeon. In October 20 and 28, 2010 reports, Dr. Cenac noted examining appellant on October 20, 2010 and reviewed the statement of accepted facts and medical file. He observed an antalgic limp, valgus deformity, moderate crepitance and limited active extension on examination. X-rays confirmed tricompartmental osteoarthritic changes and a two-millimeter cartilage interval in the lateral compartment. Applying Table 16-3 (Knee Regional Grid) on page 511 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[5] (hereinafter A.M.A., *Guides*), Dr. Cenac assigned an impairment class diagnosed condition (CDX) of two with a default grade of C for right primary knee joint arthritis involving a two-millimeter cartilage interval. In view of appellant's antalgic limp as well as moderate crepitance and deformity, he selected a grade modifier value of 2 for Functional History (GMFH) and Physical Examination (GMPE), respectively.[6] Dr. Cenac also scored 2 for Clinical Studies (GMCS) based on the cartilage interval.[7] Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (2 - 2) + (2 - 2) + (2 - 2), he calculated a net adjustment of zero. Dr. Cenac concluded that appellant had a class 2, grade C impairment of the right lower extremity, which amounted to a rating of 20 percent.[8]

In July 29 and November 1, 2010 reports, Dr. Bertha H. Daniels, a family practitioner, related that appellant experienced right knee pain. On examination, she observed crepitance, effusion and medial and lateral tenderness.[9]

On December 6, 2010 OWCP's medical adviser evaluated the medical evidence. After applying the same tables and grading schemes set forth in the A.M.A., *Guides*, he agreed that

[2] Also, on October 22, 2009 OWCP accepted appellant's claim for a June 21, 2007 recurrence.

[3] The foregoing information was incorporated into a July 21, 2010 statement of accepted facts.

[4] Appellant retired effective October 31, 2009.

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

[6] *Id.* at 516-17, Tables 16-6 and 16-7.

[7] *Id.* at 519, Table 16-8.

[8] *See infra* note 10.

[9] Dr. Daniels also noted left knee symptoms. A left knee condition is not presently before the Board.

appellant sustained a 20 percent permanent impairment of the right leg.[10] The medical adviser listed October 20, 2010 as the date of maximum medical improvement.

By decision dated December 22, 2010, OWCP granted a schedule award for 20 percent permanent impairment of the right lower extremity for the period October 20, 2010 to November 27, 2011.

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.[11] 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.[12]

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 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.[13]

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury. The Board has explained that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician which is accepted as definitive by OWCP.[14]

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[10] Table 16-8 of the A.M.A., *Guides* provides that a score for GMCS based on the cartilage interval demonstrated by x-ray must not be used if the cartilage interval is used initially to determine CDX. A.M.A., *Guides*, *supra* note 5, at 519. OWCP's medical adviser pointed out that Dr. Cenac had considered appellant's two-millimeter cartilage interval in assigning CDX and, therefore, should not have selected a value for GMCS on the same basis. His net adjustment calculation correctly omitted Dr. Cenac's GMCS score, which did not ultimately affect the impairment rating.

[11] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[12] *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).

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

[14] *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

ANALYSIS

The Board finds that OWCP properly determined appellant's permanent impairment of her right leg. OWCP accepted the claim for aggravation of preexisting right knee synovitis and popliteal cyst. After appellant claimed a schedule award, it referred her to Dr. Cenac for an impairment evaluation.

In his October 20 and 28, 2010 reports, Dr. Cenac noted appellant's history and findings on examination. He advised that x-rays confirmed tricompartmental osteoarthritic changes and a two-millimeter cartilage interval in the lateral compartment. As noted, Dr. Cenac advised that under Table 16-3 (Knee Regional Grid) on page 511 of the A.M.A., *Guides*, appellant had a default impairment rating of 20 percent of the right leg and that, after applying grade modifiers to the net adjustment formula, there was no adjustment to the default rating of 20 percent impairment.

OWCP's medical adviser reviewed Dr. Cenac's findings and also applied the appropriate tables and grading schemes of the A.M.A., *Guides.* He clearly detailed how he calculated appellant's impairment rating and essentially concurred with Dr. Cenac's rating. As noted, the A.M.A., *Guides* classifies the lower extremity impairment by diagnosis, which is then adjusted by grade modifiers.[15] In this case, based on a review of Dr. Cenac's examination findings, the medical adviser applied Table 16-3 and assigned a CDX of 2 with a default grade of C for right primary knee joint arthritis involving a two-millimeter cartilage interval that was confirmed by x-rays. He then selected a grade modifier value of 2 for both GMFH and GMPE, citing appellant's antalgic limp for the former and right knee crepitance and deformity for the latter. As the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) or (2 - 2) + (2 - 2), yielded 0, the medical adviser found that modification of the default grade was unnecessary and established that appellant sustained a 20 percent permanent impairment of the right leg. There is no other medical evidence, in conformance with the A.M.A., *Guides,* supporting a greater percentage of impairment.

Appellant contends on appeal that the schedule award should have covered a longer period of time starting as early as January 2001. When loss of use of a scheduled member or function of the body is less than 100 percent, the amount of compensation paid is in proportion to the percentage of loss of use.[16] Under FECA, the maximum award for permanent lower extremity impairment is 288 weeks of compensation.[17] Since appellant's loss was 20 percent, she was entitled to 20 percent of 288 weeks, which amounted to 57.6 weeks or approximately 403 days. Her schedule award ran from October 20, 2010 to November 27, 2011, which spanned 403 days. Regarding when a schedule award commences, the date of maximum medical improvement is proper. This date is usually the date of the medical examination that established the extent of the impairment.[18] Here, Dr. Cenac conducted such an examination on

[15] *R.V.*, *supra* note 13.

[16] 5 U.S.C. § 8107(c)(19).

[17] *Id.* at § 8107(c)(2).

[18] *See P.C.*, 58 ECAB 539 (2007); *Richard Larry Enders*, 48 ECAB 184 (1996).

October 20, 2010. Thus, OWCP correctly determined both the duration and the beginning of the period covered by the schedule award. While appellant asserts that her impairment compelled her to adopt a sedentary lifestyle, factors such as limitations on daily activities have no bearing on the calculation of a schedule award.[19]

The Board notes that appellant submitted new evidence after issuance of the December 22, 2010 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[20] 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 did not sustain more than a 20 percent permanent impairment of the right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[19] *Kimberly M. Held*, 56 ECAB 670 (2005).

[20] 20 C.F.R. § 501.2(c).