United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 11-1680**
	)	**Issued: March 15, 2012**
DEPARTMENT OF JUSTICE, U.S. MARSHALLS SERVICE, New Orleans, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 8, 2011 appellant filed a timely appeal from a May 2, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for an increased 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 the claim.

ISSUE

The issue is whether appellant has more than 10 percent impairment of the left lower extremity and 12 percent permanent impairment of the right lower extremity.

FACTUAL HISTORY

On September 12, 2003 appellant, then a 55-year-old U.S. marshal, felt severe sharp pains in both the left and right knees while training on a weight machine. OWCP accepted the

[1] 5 U.S.C. §§ 8101-8193.

claim for bilateral chondromalacia of the patella and paid appropriate compensation. By decision dated October 31, 2005, it granted appellant schedule awards for 10 percent impairment to the left lower extremity and 12 percent permanent impairment to right lower extremity. He retired from the employing establishment.

On February 8, 2010 appellant requested increased schedule awards. In a December 21, 2009 report, Dr. Deryk G. Jones, a Board-certified orthopedic surgeon, advised that appellant had bilateral knee chondromalacia patellae with central wear and lateral wear on the right and left knees. On January 25, 2010 he stated that appellant demonstrated squatting bilaterally, right side greater than left. An October 28, 2009 magnetic resonance imaging (MRI) scan of both knees revealed right greater than left chondromalacia of the patellofemoral joint with underlying cartilage wear, particularly along the central portion of the right knee and laterally along the left knee. Dr. Jones noted underlying subchondral bony changes with mild cystic formations along the central portion of the left knee patellar joint. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (hereinafter A.M.A., *Guides*), he opined that appellant had 50 percent impairment of the right knee and 40 percent impairment of the left knee. Dr. Jones opined that appellant's work as a U.S. marshal with frequent lifting and activity was causally related to the pathology of cartilage wear to his knees.

On April 9, 2010 an OWCP medical adviser reviewed the medical record, a statement of accepted facts and Dr. Jones' impairment rating of the lower extremities. He noted that Dr. Jones' impairment of 40 percent left leg and 50 percent right leg was based upon patellofemoral chondromalacia with cartilage wear; but found the rating was not probative as it lacked adequate descriptive detail to correlate with the sixth edition of the A.M.A., *Guides*.

OWCP referred appellant to Dr. Christopher Cenac, Sr., a Board-certified orthopedic surgeon, for a second opinion examination and impairment evaluation. In a July 6, 2010 report, Dr. Cenac reviewed the statement of accepted facts, appellant's medical record and set forth his findings on examination. He used the sixth edition of the A.M.A., *Guides* to rate impairment for both knees. Under Table 16-3, page 511, Knee Regional Grid, Dr. Cenac found class 1 patellofemoral arthritis with default value of three percent. Under Table 16.6, page 516, he assigned grade modifier Functional History (GMFH) of 1 due to complaints of pain associated with prolonged standing and walking during the course of the day. Under Table 16.7, page 517, Dr. Cenac assigned grade modifier Physical Examination (GMPE) of 0. Under Table 16.8, page 519, he assigned grade modifier Clinical Studies (GMCS) adjustment of 1 due to arthritic changes documented on MRI scan on the under surface of the patella bilaterally. Under Table 16.9, page 520, Dr. Cenac utilized the net adjustment formula of (GMFH-CDX) (1-1) + (GMPE-CDX) (0-1) + (GMCS-CDX) (1-1) to find a net adjustment of negative 1. He found the net adjustment of negative 1 equaled a grade B, which yielded four percent impairment of each leg.[2] Dr. Cenac opined that appellant reached maximum medical improvement on January 26, 2005. In a July 19, 2010 report, he stated that, under Table 16-3, page 511, appellant was placed in a class 1 because of the full thickness articular cartilage defect noted on his imaging studies. The class was not assigned based upon cartilage interval measurements.

[2] A negative 1 net adjustment from the default class 1, grade C value, for patellofemoral arthritis actually results in a grade B value of 2 percent impairment for each leg.

On March 28, 2011 an OWCP medical adviser reviewed Dr. Cenac's impairment rating and found that the date of maximum medical improvement was July 6, 2010. Using the physical findings in Dr. Cenac's report, the medical adviser agreed that appellant had four percent impairment to both legs. Under Table 16-3, page 511, Knee Regional Grid, he found class 1 arthritis, patellofemoral, full thickness defect, had default value three percent. Based on Dr. Cenac's descriptive findings, the medical adviser adjusted the grade modifiers to reflect GMFH 1, GMPE 1 (crepitus), GMCS 2 (MRI scan findings showing additional pathology in each knee). He utilized the net adjustment formula (GMFH-CDX) (1-1) + (GMPE-CDX) (1-1) + (GMCS-CDX) (2-1) to find net adjustment 1. A class 1 with an adjustment of 1 from the default value C equaled class 1, grade D or 4 percent impairment to each lower extremity. As this was less than the prior awards of 10 percent for the left leg and 12 percent for the right leg, there was no additional impairment to either leg.

By decision dated May 2, 2011, OWCP denied an additional schedule award for appellant's left or right lower extremities.

LEGAL PRECEDENT

A claim for an increased schedule award may be based on new exposure.[3] Absent any new exposure to employment factors, a claim for an increased schedule award may also be based on medical evidence indicating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.[4]

In determining entitlement to a schedule award, preexisting impairment to the scheduled member should be included.[5] Any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.[6]

The schedule award provision of FECA and its implementing 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.[8] 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

[3] *A.A.*, 59 ECAB 726 (2008); *Tommy R. Martin*, 56 ECAB 273 (2005); *Rose V. Ford*, 55 ECAB 449 (2004).

[4] *James R. Hentz*, 56 ECAB 573 (2005); *Linda T. Brown*, 51 ECAB 115 (1999).

[5] *Carol A. Smart*, 57 ECAB 340 (2006); *Michael C. Milner*, 53 ECAB 446 (2002).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(a)(2) (January 2010).

[7] 20 C.F.R. § 10.404.

[8] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[9] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[10]

OWCP 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.[11]

ANALYSIS

OWCP accepted that appellant sustained bilateral chondromalacia of the patella due to his September 12, 2003 work injury. By decision dated October 31, 2005, it awarded him 10 percent permanent impairment to the left lower extremity and 12 percent permanent impairment to right lower extremity. Appellant subsequently requested an increase award. By decision dated May 2, 2011, OWCP found that he was not entitled to an additional schedule award to either lower extremity. The issue is whether the medical evidence establishes that appellant sustained an increased impairment of his left lower extremity and right lower extremity greater than that previously received.

Dr. Jones opined under the sixth edition of the A.M.A., *Guides* that appellant had 50 percent disability of the right knee and 40 percent disability of the left knee. However, he did not explain in his report how appellant had any impairment of a scheduled body member under the sixth edition of the A.M.A., *Guides.* As such, Dr. Jones' finding on impairment is of diminished probative value and is insufficient to establish a particular degree of permanent impairment to a scheduled body member.[12]

Dr. Cenac opined that appellant reached maximum medical improvement on January 26, 2005. He indicated that under Table 16-3, page 511 appellant was placed in a class 1 patellofemoral arthritis with default value of three percent because of the full thickness articular cartilage defect noted on his imaging studies. Under Table 16.6, page 516, Dr. Cenac assigned GMFH of 1 due to complaints of pain associated with prolonged standing and walking during the course of the day. Under Table 16.7, page 517, he assigned GMPE of 0. Under Table 16.8, page 519, Dr. Cenac assigned GMCS adjustment of 1 due to arthritic changes documented on MRI scan on the under surface of the patella bilaterally. Under Table 16.9, page 520, he utilized the net adjustment formula of (GMFH-CDX) (1-1) + (GMPE–CDX) (0-1) + (GMCS-CDX) (1-1) to

[9] *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[10] 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).

[11] *See* Federal (FECA) Procedure Manual, Part 2, *id*., Chapter 2.808.6(d) (August 2002).

[12] *See Carl J. Cleary*, 57 ECAB 563, 568 at note 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).

find a net adjustment of negative 1. While Dr. Cenac properly found the net adjustment of negative 1 equaled a grade B, the Board notes that this equates to two percent impairment as opposed to the four percent impairment found by Dr. Cenac for both the right and left lower extremities.[13]

The medical adviser reviewed Dr. Cenac's impairment evaluation and opined that appellant reached maximum medical improvement on July 6, 2010. Using the findings in Dr. Cenac's report, the medical adviser opined that appellant had four percent impairment to both the left and right legs. Under Table 16-3, page 509-11, Knee Regional Grid, class 1 arthritis, patellofemoral, full thickness defect, had default value three percent. Based on Dr. Cenac's findings, the medical adviser noted grade modifiers to reflect GMFH 1, GMPE 1 due to crepitus, and GMCS 2 based on MRI scan findings showing additional pathology in each knee. He properly utilized the net adjustment formula (GMFH-CDX) (1-1) + (GMPE-CDX) (1-1) + (GMCS-CDX) (2-1) to find net adjustment 1. A class 1 diagnosis with an adjustment of 1 from the default value C equaled class 1, grade D or four percent impairment to each leg. The Board finds that the medical adviser properly utilized the A.M.A., *Guides* in determining appellant's impairment to the bilateral lower extremities. There is no current impairment rating in conformance with the A.M.A., *Guides*, which supports any greater impairment.

The Board further notes that four percent impairment of each leg is less than the impairment rating for which appellant received a schedule award on October 31, 2005. The medical adviser properly subtracted the prior awards, as noted, from the current impairment determination to conclude that appellant had no additional impairment beyond that for which he previously received a schedule award. Consequently, the weight of the medical evidence establishes that appellant has no more than 10 percent impairment of the left lower extremity and no more than 12 percent of the right lower extremity, as was previously awarded.

On appeal appellant asserts that the impairment rating from his treating physicians should be given more weight than that of Dr. Cenac, who is not that familiar with his work history or his knee pathology. As explained, Dr. Jones' opinion may not be the basis of a schedule award as he did not explain how he calculated appellant's impairment under the A.M.A., *Guides*. The Board notes that Dr. Cenac examined appellant and was provided a copy of appellant's medical file as well as a statement of accepted facts. The Board further notes that OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the 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.[14] Here, the medical adviser considered the medical evidence and explained why there was no basis to provide an additional impairment to appellant's lower extremities.

[13] A negative 1 net adjustment from class 1 patellofemoral arthritis equals two percent impairment.

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

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 establish entitlement to an additional schedule award in this case.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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