United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 12-1041**
	)	**Issued: October 22, 2012**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Marianna, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 18, 2012 appellant filed a timely appeal from a December 5, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his schedule award claim. 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 decision.

ISSUE

The issue is whether appellant is entitled to a schedule award for a permanent impairment of the left lower extremity.

FACTUAL HISTORY

On January 4, 2010 appellant, then a 45-year-old correctional officer, filed a traumatic injury claim alleging that on December 31, 2009 he injured his left leg in the performance of duty. OWCP accepted the claim for a sprain of the left knee and leg and a rupture of the left

[1] 5 U.S.C. § 8101 *et seq.*

quadriceps tendon. On January 11, 2010 Dr. Patrick Guin, a Board-certified orthopedic surgeon, performed a surgical repair of the left quadriceps tendon rupture.

On August 10, 2010 Adam Lee Borcik, a physical therapist, performed an impairment evaluation at the request of Dr. Guin. He noted that appellant was currently at maximum medical improvement following a work injury on December 31, 2009 resulting in a left knee quadriceps tendon tear and surgery. Mr. Borcik measured range of motion of the left knee as 0 degrees extension to 135 degrees flexion on the left and 0 degrees extension and 132 degrees extension on the right. He found full manual muscle strength of 5/5, intact sensation and a loss of two millimeters of girth on the left side. Mr. Borcik further found mild tenderness at the "tibial tubercle in the distal patellar tendon." He noted that appellant had returned to his regular work but had some "pain with running and deep squatting." Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*), Mr. Borcik identified the relevant diagnosis as a strain, tendinitis or ruptured tendon using the Knee Regional Grid at Table 16-3 on page 509. He assigned appellant class 0 on the grid as he had no "significant objective or abnormal findings of muscle or tendon injury" at the time that he reached maximum medical improvement. Mr. Borcik further determined that appellant experienced no deficit in motor function and could perform all daily and work-related activities with "only reports of some difficulty with deep squatting and running." Consequently, he found that grade modifiers did not alter the class 0 diagnosis class and concluded that appellant had no impairment of the lower extremity or whole person.

On August 19, 2010 Dr. Guin concurred with the findings of Mr. Borcik.

On March 9, 2011 appellant filed a claim for a schedule award. On April 5, 2011 OWCP's medical adviser noted that appellant had excellent results following his quadriceps tendon repair with "some residual pain on running and deep squatting." He found that appellant had range of motion from 0 to 135 degrees, full strength, good sensation and only a two millimeter difference in circumference of his knees. The medical adviser determined that Dr. Guin appropriately used the diagnosis-based impairment rating set forth in the sixth edition of the A.M.A., *Guides* to find that appellant had no impairment of the left lower extremity.

By decision dated April 25, 2011, OWCP denied appellant's claim for a schedule award on the grounds that the medical evidence did not show that he sustained a ratable impairment of the left lower extremity.

On May 10, 2011 appellant requested a telephone hearing before an OWCP hearing representative. At the telephonic hearing, held on September 13, 2011, he related that he had good range of motion but had a knot on his knee that makes kneeling difficult. Appellant further experienced weakness walking up and down stairs and pain going down stairs. He could no longer run because of his knee pain.

By decision dated December 5, 2011, OWCP's hearing representative affirmed the April 25, 2011 decision. She found that appellant had not submitted any medical evidence showing that he had a permanent impairment.

On appeal, appellant related that he had a knot on his knee and that when he kneeled and it felt like he was "kneeling on a pencil." The knot limited his kneeling and crawling. Appellant questioned why a reduction in mobility did not constitute a permanent impairment.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and its implementing federal regulations[3] 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.[4] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[5]

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[6] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

ANALYSIS

OWCP accepted that on December 31, 2009 appellant sustained a left knee and leg sprain and a rupture of the left quadriceps tendon. On January 11, 2010 Dr. Guin performed a surgical repair of the left quadriceps tendon rupture.

On August 10, 2010 Mr. Borcik, a physical therapist, performed an impairment evaluation at the request of Dr. Guin, who found that appellant had good muscle strength, sensation and range of motion, which he measured as 0 degrees extension to 135 degrees flexion on the left and 0 degree extension. He indicated that appellant had a two millimeter loss of girth on the left and mild tenderness at the distal patellar tendon. Mr. Borcik noted that appellant had resumed his regular work but experienced pain with deep squats and running. He identified the diagnosis as a class 0 ruptured tendon under the Knee Regulation Grid set forth in Table 16-3 of the A.M.A., *Guides*. Mr. Borcik assigned appellant class 0 as he had reached maximum medical improvement without significant abnormal findings following his injury. He further found that he had full motor function and could perform his work and daily activities with only some limitations with deep squatting and running. Mr. Borcik determined that appellant had no impairment of the left lower extremity. Dr. Guin and OWCP's medical adviser reviewed and

[2] *Id*. at § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id.* at § 10.404(a).

[5] 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).

[6] A.M.A., *Guides* 494-531.

concurred with Mr. Borcik's findings. There is no medical evidence supporting that appellant has a ratable impairment of the left knee under the sixth edition of the A.M.A., *Guides*.

On appeal, appellant argues that his mobility is affected by the knot on his knee and asserts that he can no longer run or kneel. Factors such as limitations on daily activities, however, have no bearing on the calculation of a schedule award.[7]

Appellant further questioned why OWCP found that he had no impairment. It is his burden, however, to submit medical evidence supporting a permanent impairment.[8] 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 is not entitled to a schedule award for a permanent impairment of the left lower extremity.

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

[8] *See D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board