United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 12-1627**
	)	**Issued: April 2, 2013**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SAFETY ADMINISTRATION, Chantilly, VA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 26, 2012 appellant, through his attorney, filed a timely appeal of the March 30 and July 19, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP) granting schedule awards. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether appellant has more than two percent impairment of his right leg for which he has received a schedule award; and (2) whether appellant has more than five percent impairment of his right lung for which he has received a schedule award.

On appeal counsel argues that OWCP did not consider all of appellant's right knee conditions in determining permanent impairment. He further argued that OWCP did not rate

[1] 5 U.S.C. § 8101 *et seq.*

impairment for appellant's deep vein thrombosis (DVT) and three thrombotic events resulting in life time anti-coagulation treatment.

FACTUAL HISTORY

On February 17, 2010 appellant, then a 29-year-old federal air marshal, filed a traumatic injury claim alleging pain and swelling in his right knee after a physical fitness tempo run on February 2, 2010. He underwent a right knee magnetic resonance imaging (MRI) scan on February 11, 2010 which demonstrated a longitudinal tear of posterior horn medial meniscus and an intact reconstructed anterior cruciate ligament. Appellant's attending physician recommended surgery on February 18, 2010.

OWCP accepted appellant's claim for tear of the medial meniscus of the right knee on April 14, 2010. On April 29, 2010 he underwent a right knee arthroscopy, partial medial meniscectomy and chondroplasty of the patella. Dr. Randall Peyton, a Board-certified orthopedic surgeon, noted that appellant lost approximately 80 percent of the meniscus.

Appellant sought treatment in the emergency room for DVT on May 5, 2010. Dr. Rita A. Bass, a Board-certified radiologist, completed a right lower extremity venous Doppler on May 5, 2010. It demonstrated DVT and fluid collection in the posterior medial knee. On May 12, 2010 appellant underwent a second venous Doppler which demonstrated "considerable, but incomplete resolution" of the previous DVT. On May 17, 2010 Dr. Peyton stated that appellant underwent arthroscopy to repair large meniscal tears and demonstrated a complication of DVT. OWCP accepted appellant's claim for DVT of the right leg on May 24, 2010.

On May 13, 2010 appellant underwent an inferior vena cava (IVC) filter placement. On September 27, 2010 he underwent a venous Doppler of the right lower extremity which demonstrated residual, though less, thrombus within the peroneal and posterior tibial veins with some further recanalization. On October 4, 2010 Dr. Lee Resta, a Board-certified hematologist, recommended removing the IVC filter. He removed the filter on October 15, 2010.

Appellant filed a notice of recurrence of disability on November 1, 2010 noting the date of recurrence as October 15, 2010. He stated that he would not be able to fly to perform his regular duties for 6 to 12 months due to treatment for DVT. OWCP accepted the recurrence claim on November 8, 2010.

On October 28, 2010 appellant developed a pulmonary embolism. He filed a notice of recurrence on November 1, 2010 alleging that the DVT in his leg embolized and traveled to his lungs. On November 5, 2010 Dr. Dawn Jones, a Board-certified surgeon, noted that, following appellant's knee surgery, he developed thrombosis with four blood clots found in the right calf. She noted that appellant developed chest pain after the IVC filter was removed and diagnosed pulmonary embolism. In a note dated November 17, 2010, Dr. Terrence Reidy, a Board-certified hematologist, stated that appellant had pulmonary emboli which were an extension of the DVT in his leg. He stated that appellant would need to remain on an anticoagulant medication indefinitely. OWCP accepted appellant's recurrence of disability on November 18, 2010 and the pulmonary embolism as due to his February 2, 2010 employment injury.

On September 12, 2011 appellant filed a notice of recurrence of disability alleging that on September 1, 2011 he again developed blood clots in his right leg when he was removed from the anticoagulant for an emergency appendectomy. He filed a notice of recurrence on September 19, 2011 alleging that he sustained a recurrence on September 1, 2011 due to his February 2, 2010 employment injury. OWCP accepted this claim on October 6, 2011.

Appellant underwent a venous Doppler on September 1, 2011 which demonstrated thrombus within the anterior tibialis vein and a smaller vein in the posterior mid-calf region. In a report dated September 12, 2011, Dr. Reidy stated that appellant's recent DVT of the right leg was related to his original injury. He stated, "The initial clot made your blood vessel abnormal and more susceptible to further clot formation."

Appellant requested a schedule award on February 23, 2012. In a report dated February 24, 2012, Dr. Martin Fritzhand, a Board-certified urologist, noted appellant's history of injury on February 2, 2010 and resulting surgery. He listed appellant's continued knee pain and recurrent DVT involving the right lower extremity. Dr. Fritzhand stated that appellant would remain on Coumadin for the remainder of his life. He evaluated appellant under the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* Dr. Fritzhand utilized Table 9-12, p. 208, to assess appellant's history of recurrent DVT to determine that he had class 3 impairment or 100 percent impairment of the right leg. He also determined that appellant had primary knee joint arthritis under Table 16-3, p. 511, a class 2 impairment. Dr. Fritzhand relied on an x-ray demonstrating two millimeter cartilage separation. He found function history grade 0, physical examination grade 1 and clinical studies grade 2. Dr. Fritzhand determined that appellant sustained 16 percent impairment of the right lower extremity due to grade A impairment.

On March 20, 2012 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the record. He found that knee joint arthritis was not an accepted condition and would not be appropriate for the calculation of a schedule award. Dr. Berman determined that appellant was entitled to two percent impairment of the right knee due to the partial medial meniscectomy. He cited to Table 16-3, Knee Regional Grid -- Lower Extremity Impairments, partial medial meniscectomy, class 1, grade C.[2] Dr. Berman stated:

> "In regard to the DVT and the thrombotic disorder, utilizing page 208, Table 9-12: *Criteria for Rating Impairment Due to Thrombotic Disorders*, this would fall in the category of [c]lass 1, one prior incident of thrombosis, with a range of one to nine percent whole person impairment, which would coincide to lung specific organ specific schedule award disability. The range is one to nine percent."

Dr. Berman recommended five percent impairment for the lungs[3] and two percent impairment for the right lower extremity.

[2] A.M.A., *Guides* 509, Table 16-3.

[3] *Id.* at 208, Table 9-12.

By decision dated March 30, 2012, OWCP granted appellant schedule awards for two percent impairment of the right leg and five percent impairment of the right lung.

On April 24, 2012 counsel requested reconsideration. He argued that the arthritic condition of appellant's right knee was a preexisting condition and should be considered when making the rating. Counsel contended that OWCP's medical adviser did not provide rationale for disagreeing with Dr. Fritzhand's ratings.

In a report dated April 5, 2012, Dr. Fritzhand noted that appellant experienced two thrombotic events in 2010 and one thrombotic event in 2011. He reported that a Dr. Broome examined appellant and that lifelong anticoagulation was indicated. Dr. Fritzhand stated that appellant had class 3 impairment as he had "one or more thrombotic events per year" as required by Table 9-12 of the A.M.A., *Guides*. He explained that appellant did not have the second key factor, hypercoagulable state. Dr. Fritzhand found that appellant had 35 percent whole person impairment which was added to 5 percent impairment due to the use of Warfarin under section 9.6c. He rated 40 percent impairment of the whole person which correlated to 100 percent impairment of the right lower extremity or 40 percent impairment of the lung. Dr. Fritzhand stated, "However, [appellant] has no symptoms referable to his pulmonary system. All symptoms are referable to the right lower extremity. Thus it is my medical opinion that [appellant] has sustained a permanent partial impairment to the right lower extremity of 100 percent." He also stated that he utilized knee joint arthritis as this was a preexisting condition.

On May 23, 2012 OWCP referred the record to the medical adviser noting that preexisting impairments of the body are to be included. On June 4, 2012 Dr. Berman noted that the only accepted condition was a tear of the medial meniscus of the right knee. He stated, "The fact that there was preexisting osteoarthritis of the knee is irrelevant because it is very common to have minor preexisting osteoarthritis that would not be causing symptoms as in this case. However, because of the pathology, specifically was a torn meniscus, and this is what required arthroscopic surgery. Therefore, osteoarthritis of the knee is not the appropriate diagnosis."

Dr. Berman further stated that the calculation of the thrombotic disorder, was based on the pulmonary embolus suffered by appellant. He stated that this condition occurred in the lung and the pathology and the abnormalities were related to the lung and that Dr. Fritzhand erred in making a lung equivalency converted to a leg equivalency. Dr. Berman concluded that appellant could not be rated for DVT in the leg. He further opined that appellant would not be required to take Coumadin for life based on the singular pulmonary embolism.

By decision dated July 19, 2012, OWCP denied modification of its schedule award decision relying on the medical adviser's report.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations[5] set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of loss of use, of scheduled members or functions of the body. FECA, 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 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[6]

In addressing lower extremity impairments, 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). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[7]

The lower extremity chapter of the A.M.A., *Guides* states that vascular conditions are rated in accordance with section 4.8 of the A.M.A., *Guides Vascular Diseases Affecting the Extremities*, and may be combined with diagnosis-based impairments using the Combined Values Chart.[8]

Section 9.6 Thrombotic Disorders states that impairment is based on both the thrombotic disorder itself and the impact of the thrombosis that have occurred on a particular affected body system. This includes the degree of injury to the end-organ, such as the lungs, heart, brain, kidney and extremities from thrombosis and on how the disorder affects the individual's capacity to perform the activities of daily living. The A.M.A., *Guides* state, "Regardless of the system involved, the rating that results due to the sequelae of thrombotic disease should be combined with the impairment from the thrombotic disease itself (to which is added five percent for the use of anticoagulants, if appropriate, before combining) using the Combined Values Chart in the Appendix."[9]

[4] 5 U.S.C. §§ 8101-8193, 8107.

[5] 20 C.F.R. § 10.404.

[6] For new decisions issued after May 1, 2009 the Office began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[7] A.M.A., *Guides* 521. *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[8] A.M.A., *Guides* 497.

[9] *Id.* at 206-8, section 9.6 Thrombotic Disorders.

ANALYSIS

OWCP has accepted the conditions of tear of the medial meniscus of the right knee, arthroscopic surgery and DVT of the right leg. On May 13, 2010 appellant underwent an IVC filter placement and removal of the filter on October 15, 2010. OWCP also accepted that appellant developed a pulmonary embolism on October 28, 2010 due to his February 2, 2010 employment injury. On September 1, 2011 he again developed blood clots in his right lower leg. OWCP accepted this claim on October 6, 2011.

Dr. Fritzhand examined appellant on February 7, 2012 and described appellant's continued knee pain and recurrent DVT involving the right leg. He stated that appellant would remain on Coumadin (Warfarin) for the remainder of his life based on the opinion of the attending physician. Dr. Fritzhand utilized Table 9-12 of the A.M.A., *Guides* to rate appellant's recurrent DVT and as class 3 impairment or 100 percent impairment of the right lower extremity.[10] He also determined that appellant had primary knee joint arthritis under Table 16-3 or class 2 impairment.[11] Dr. Fritzhand relied on an x-ray demonstrating two millimeter cartilage separation. He found function history grade 0, physical examination grade 1, and clinical studies grade 2. Dr. Fritzhand determined that appellant sustained 16 percent impairment of the right lower extremity due to grade A impairment.

Dr. Berman found that knee joint arthritis was not an accepted condition and would not be appropriate for the calculation of a schedule award. He determined that appellant was entitled to two percent impairment of the right knee due to the partial medial meniscectomy.[12] The medical adviser found that appellant's DVT and pulmonary embolism was rated using Table 9-12 category of class 1, one prior incident of thrombosis, with a range of one to nine percent whole person impairment, which would coincide to lung specific impairment.[13] He recommended five percent impairment for the lungs and two percent impairment for the right lower extremity.

On April 5, 2012 Dr. Fritzhand stated that appellant experienced two thrombotic events in 2010 and one thrombotic event in 2011 and that lifelong anticoagulation was indicated. He again utilized Table 9-12,[14] and to find that appellant had class 3 impairment as he had "one or more thrombotic events per year." He explained that appellant did not have the second key factor, hypercoagulable state. Dr. Fritzhand found that appellant had 35 percent whole person impairment which was added to 5 percent impairment due to the use of Warfarin under Section 9.c.[15] He concluded that 40 percent impairment of the whole person correlated to 100

[10] *Id.* at 208, Table 9-12.

[11] *Id.* at 511, Table 16-3.

[12] *Id.* at 509, Table 16-3.

[13] *Id.* at 208, Table 9-12.

[14] *Id.*

[15] A.M.A., *Guides*, 207. "If the individual is receiving long-term anticoagulant therapy for the thrombotic disorder with Warfarin, low-molecular-weight heparin, or heparin, five percent is added to the impairment rating."

percent impairment of the right leg and 40 percent impairment of the lung. Dr. Fritzhand stated, "However, [appellant] has no symptoms referable to his pulmonary system. All symptoms are referable to the right lower extremity. Thus it is my medical opinion that [appellant] has sustained a permanent partial impairment to the right lower extremity of 100 percent." He also stated that he utilized knee joint arthritis as this was a preexisting condition.

On June 4, 2012 Dr. Berman reiterated that the only accepted condition of the lower extremity was a tear of the medial meniscus of the right knee. He stated, "The fact that there was preexisting osteoarthritis of the knee is irrelevant because it is very common to have minor preexisting osteoarthritis that would not be causing symptoms as in this case. However, because of the pathology, specifically was a torn meniscus, and this is what required arthroscopic surgery. Therefore, osteoarthritis of the knee is not the appropriate diagnosis."

The medical adviser determined that the calculation of the thrombotic disorder was based on the pulmonary embolus suffered by appellant. As this condition occurred in the lung and the pathology and the abnormalities were related to the lung, it was the proper organ to rate. The medical adviser concluded that appellant could not be rated for DVT in the leg.

The Board finds that this case is not in posture for a decision. The reports of OWCP's medical adviser are not sufficient to address the medical issues raised in this case. Dr. Fritzhand has alleged that appellant had preexisting arthritis in his knee as found on x-ray. The medical history includes a surgically reconstructed anterior cruciate ligament prior to appellant's February 2, 2010 employment injury. It is well established that, in determining the amount of a schedule award for a given member of the body that sustained an employment-related permanent impairment, preexisting impairments of that scheduled member of the body are to be included.[16] OWCP's medical adviser does not discuss this aspect of appellant's claim or whether the findings on x-ray prior to determining that appellant's knee arthritis was not compensable under the A.M.A., *Guides*.

In regard to appellant's accepted thrombotic conditions, including DVT on May 24, 2010, pulmonary embolism on October 28, 2010 and additional blood clots in his right lower extremity on September 1, 2011, the Board finds that the medical evidence did not address appellant's DVT of the right lower extremity under Chapter 4 of the A.M.A., *Guides*. As noted, the A.M.A., *Guides* indicate that vascular conditions of the lower extremities are rated under section 4.8. Neither OWCP's medical adviser nor Dr. Fritzhand addressed this in rating permanent impairment. The section of the A.M.A., *Guides* addressing thrombotic disorders states that both the disorder and the impact of the disorder on the end system, including the extremities should be rated. The medical adviser offered an unsupported statement that appellant could not be rated for DVT in the leg. Dr. Fritzhand did not apply this Chapter 4 rating impairment. This reduced the probative value of the medical evidence.

As the medical evidence of record does not comport with the A.M.A., *Guides*, the Board finds that the case is not in posture for decision. The case will be remanded to OWCP for additional development of the medical evidence to be followed by a *de novo* decision.

[16] *K.H.*, Docket No. 09-341 (issued December 30, 2009).

CONCLUSION

The Board finds that the case is not in posture for decision as to the extent of permanent impairment to appellant's right leg or right lung.

ORDER

IT IS HEREBY ORDERED THAT the March 30 and July 19, 2012 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further development consistent with this opinion of the Board.

Issued: April 2, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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