

**United States Department of Labor
Employees' Compensation Appeals Board**

A.T., Appellant)	
)	
and)	Docket No. 13-425
)	Issued: April 26, 2013
DEPARTMENT OF THE INTERIOR,)	
NATIONAL PARK SERVICE, Cherokee, NC,)	
Employer)	
)	

<i>Appearances:</i> <i>Appellant, pro se</i> <i>Office of Solicitor, for the Director</i>	<i>Case Submitted on the Record</i>
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DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 19, 2012 appellant filed a timely appeal from a November 16, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has more than a 75 percent permanent impairment to the left leg.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant specifically requested review of August 29 and November 16, 2012 decisions with respect to an additional schedule award for the left leg. The appeal did not request review of an August 7, 2012 wage-earning capacity decision.

FACTUAL HISTORY

The case was before the Board on a prior appeal.³ As the Board noted, appellant filed a traumatic injury claim for left knee injuries on August 22, 1985, which was accepted for left knee internal derangement and permanent aggravation of left knee osteoarthritis. In the prior decision, the Board affirmed a November 4, 1996 OWCP decision reducing his compensation on the grounds his wage-earning capacity was represented by the selected position of security guard. The history of the case as presented in the Board's prior decision is incorporated herein by reference.

With respect to a permanent impairment, OWCP issued a schedule award for a 10 percent permanent impairment to the left leg on February 17, 1988. The period of the award was 28.80 weeks from October 6, 1987. By decision dated October 4, 1994, OWCP issued a schedule award for an additional six percent impairment to the left leg. The period of the award was 17 weeks from February 6, 1994.

The record indicates that appellant underwent a total left knee replacement surgery on March 30, 2005. On January 25, 2007 OWCP accepted the claim for an infection of the left knee post total knee replacement. By decision dated August 27, 2008, it issued a schedule award for an additional 59 percent impairment to the left leg. The period of the award was 169.92 weeks commencing August 31, 2008.

On February 29, 2012 appellant submitted a February 23, 2012 report from Dr. Troy Schmidt, a Board-certified orthopedic surgeon, who noted that appellant, had undergone surgery on June 11, 2010 and appellant stated that his knee was doing well with some minor pain. Dr. Schmidt stated that he would give a 40 percent disability for the left leg due to the knee replacement, with an additional 10 percent impairment for a total 50 percent left leg impairment based on the North Carolina Industrial Commission rating guide. In a report dated August 28, 2012, OWCP's medical adviser opined that under Table 16-3 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a 37 percent left leg permanent impairment for a fair result from a total knee replacement.

By decision dated August 29, 2012, OWCP determined that appellant was not entitled to an additional schedule award. Appellant requested reconsideration and OWCP referred him to Dr. Glenn Scott, an orthopedic surgeon, for a second opinion evaluation. In a report dated October 16, 2012, Dr. Scott provided a history and results on examination. As to permanent impairment, he identified Table 16-3 with a diagnosis of total knee replacement, poor result with chronic infection. Dr. Scott stated that the default impairment was 75 percent and with grade modifiers of two for Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS), there was no adjustment. In a report dated August 28, 2012, OWCP's medical adviser opined that appellant did not have more than the 75 percent impairment previously received.

³ Docket No. 97-952 (issued January 21, 1999).

By decision dated November 16, 2012, OWCP reviewed the case on its merits and denied modification. It found the medical evidence did not establish more than a 75 percent left leg impairment.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁶

With respect to knee impairment, the A.M.A., *Guides* provides a regional grid at Table 16-3.⁷ The class of impairment (CDX) is determined based on specific diagnosis and severity (from class 0 to class 4) and then the default impairment value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers (from zero to four) for GMFH, Table 16-6, GMPE, Table 16-7 and GMCS, Table 16-8. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁸ If the CDX is a class 4, then the A.M.A., *Guides* provides that +1 is added to any grade modifier.⁹

ANALYSIS

In the present case, the record indicates that appellant had received three schedule awards for his left leg based on his left knee injury, totaling a 75 percent left leg permanent impairment. The issue presented on appeal is whether appellant has established entitlement to an additional impairment.

The Board notes that appellant submitted a February 29, 2012 report from Dr. Schmidt, who opined that appellant had a 50 percent left leg impairment based on the North Carolina Industrial Commission rating guide. Dr. Schmidt did not identify any tables or provide an impairment rating based on the A.M.A., *Guides*. Moreover, his impairment rating was less than 75 percent. Dr. Schmidt's report is thus not sufficient to establish an additional schedule award.

⁴ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁵ A. George Lampo, 45 ECAB 441 (1994).

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁷ A.M.A., *Guides* 509-11, Table 16-3.

⁸ The net adjustment is up to +2 (grade E) or -2 (grade A).

⁹ A.M.A. *Guides* 522. The A.M.A. *Guides* notes that otherwise a grade D or grade E impairment could never be established for a CDX 4 impairment.

OWCP referred the case to Dr. Scott for evaluation. Dr. Scott opined that under Table 16-3 of the A.M.A., *Guides* appellant had a 75 percent leg impairment. The Board notes that under Table 16-3, the default (grade C) impairment for a poor result with chronic infection from a total knee replacement is 75 percent.¹⁰ Dr. Scott then stated that with grade modifiers of two (moderate problem) for functional history, physical examination and clinical studies, there would be no adjustment. The Board notes that using the grade modifiers identified by him would result in a lower impairment than 75 percent. Since the CDX is a class 4, the formula requires adding 1 to the grade modifiers, resulting in $(3-4) + (3-4) + (3-4) = -3$. The maximum net adjustment is -2 or grade A, resulting in a 67 percent leg impairment under Table 16-3.¹¹ OWCP's medical adviser also opined that appellant did not have more than a 75 percent left leg impairment.

The Board accordingly finds that, based on the medical evidence, appellant has not established more than a 75 percent left leg permanent impairment. The second opinion physician did not find an impairment greater than 75 percent and appellant did not submit probative medical evidence on the issue.

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 has not established more than a 75 percent left leg permanent impairment.

¹⁰ *Id.* 511, Table 16-3.

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 16, 2012 is affirmed.

Issued: April 26, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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