United States Department of Labor
Employees' Compensation Appeals Board

G.S., Appellant	)	
and	)	**Docket No. 12-1556**
	)	**Issued: January 14, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 12, 2012 appellant, through his attorney, filed a timely appeal from a June 28, 2012 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 merits of the case.

ISSUE

The issue is whether appellant has greater than a 10 percent impairment of the left leg for which he received a schedule award.

On appeal his attorney asserts that appellant is entitled to the impairment rating found by the attending physician.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board. In an April 10, 2012 decision, the Board found that the case was not in posture for decision as a conflict in medical evidence arose between Dr. David Weiss, an attending osteopath, and Dr. Christopher R. Brigham, an OWCP medical adviser, who is Board-certified in family and preventive medicine. The Board set aside a July 11, 2011 schedule award decision and remanded the case for OWCP to refer appellant to an impartial medical specialist to resolve the conflict, to be followed by a *de novo* decision.[2]

In June 2012 OWCP referred appellant to Dr. Andrew J. Collier, Jr., a Board-certified orthopedic surgeon, for an impairment evaluation in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[3] In a June 6, 2012 report, Dr. Collier reviewed the medical record and the statement of accepted facts. He noted that appellant was no longer receiving treatment for his left knee injury but reported that he would have knee swelling at the end of the day with an occasional feeling that the knee would buckle and that he had difficulty going up and down stairs. Dr. Collier stated that appellant moved around the room and on and off the table well and had a bilateral, nonantalgic symmetrical gait. Left knee examination demonstrated no synovitis, effusion, erythema or warmth and no ligamentous laxity. Lachman's, drawer and McMurray's signs were negative. Dr. Collier indicated that appellant had medial osteophytes on the femur and the tibia that caused discomfort. Range of motion was good and equal to the right, with no crepitus or ankylosis and no thigh atrophy. Appellant could squat to approximately 90 percent holding on and could step up and down onto a stool with the left leg without difficulty. Dr. Collier diagnosed tears of the left knee medial and lateral menisci, status postsurgical arthroscopy. He advised that appellant reached maximum medical improvement on September 8, 2010, when he returned to full duty.

Dr. Collier rated impairment under Table 16-3, Knee Regional Grid, of the A.M.A., *Guides*. He identified a diagnosis of meniscal injury with subtotal medial and lateral meniscectomies, which he rated at class 1 with a default grade of C or a 10 percent impairment of the left leg. Dr. Collier applied grade modifiers, noting that, as appellant had a normal gait, functional history adjustment was zero; since he also had no crepitus and minimal pain, his adjustment for physical examination was 1; and, as he had no relevant clinical studies, this modifier was not applicable. He then used the net adjustment formula, which gave a net adjustment of -1 which, under Table 16-3, moved the default grade to the left to B for an eight percent impairment of the left lower extremity. Dr. Collier explained that his rating was in agreement with that of Dr. Brigham except for the physical examination modifier. He noted that Dr. Brigham based his modifier of 2 on Dr. Weiss' report and findings, but that, as he found

[2] Docket No. 11-1686 (issued April 10, 2012). On February 12, 2012 appellant, a letter carrier, sustained bilateral contusions of the knees and lower legs, and left lateral and medial meniscus tears, when he tripped while delivering mail. In a January 25, 2011 report, Dr. Weiss advised that appellant had a 13 percent left lower extremity impairment. Dr. Brigham, an OWCP medical adviser, reviewed Dr. Weiss' report and concluded that appellant had a 10 percent left leg impairment. By decision dated July 11, 2011, appellant was granted a schedule award for a 10 percent impairment of the left leg based on the opinion of Dr. Brigham.

[3] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008).

minimal findings on his examination, he found that appellant was entitled to a modifier of 1 for physical examination.

By decision dated June 28, 2012, OWCP found that appellant was not entitled to a schedule award greater than the 10 percent previously awarded.

LEGAL PRECEDENT

The schedule award provision of FECA,[4] and its implementing federal regulations,[5] 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.[6] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7] For decisions issued after May 1, 2009, the sixth edition will be used.[8]

The sixth edition of 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).[9] Under the sixth edition, for lower extremity impairments the evaluator identifies 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).[10] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[11] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[12]

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id*. at § 10.404(a).

[7] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[8] FECA Bulletin No. 09-03 (issued March 15, 2009).

[9] A.M.A., *Guides*, *supra* note 3 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[10] *Id*. at 494-531.

[11] *Id*. at 521.

[12] *Id*. at 23-28.

the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[13]

ANALYSIS

OWCP accepted that appellant sustained left lateral and medial meniscus tears. On July 11, 2011 it granted him a schedule award for 10 percent impairment of the left lower extremity, based on the opinion of Dr. Brigham, an OWCP medical adviser. In an April 10, 2012 decision, the Board set aside the July 11, 2011 schedule award decision, finding that a conflict in medical opinion had been created between Dr. Weiss, an attending osteopath, and Dr. Brigham regarding the extent of the left lower extremity impairment. OWCP thereafter referred appellant to Dr. Collier.

The Board finds that Dr. Collier's opinion is thorough and well rationalized and represents the weight of the medical evidence.[14] In a report dated June 6, 2012, Dr. Collier noted his review of the statement of accepted facts and medical record. He provided physical examination findings, diagnosed tears of the left medial and lateral menisci, status postsurgical arthroscopy and provided an impairment evaluation in accordance with the A.M.A., *Guides*. As noted by Dr. Collier, under Table 16-3, Knee Regional Grid,[15] partial medial and lateral meniscectomies are rated as a class 1 impairment with a default value of 10 percent. He then properly applied the grade modifiers and net adjustment formula,[16] finding a net adjustment of -1. This moved the default grade of C, found under Table 16-3, one position to the left for a grade of B which yielded an eight percent impairment of the left lower extremity.

The Board has carefully reviewed the opinion of Dr. Collier and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue in the present case. Dr. Collier opinion is based on a proper factual and medical history and he thoroughly reviewed the factual and medical history and accurately summarized the relevant medical evidence.[17] He provided medical rationale for his opinion by explaining that he found minimal findings on his physical examination of appellant. Dr. Collier's opinion is consequently entitled to special weight as the impartial medical examiner and establishes that appellant has an eight percent impairment of the left lower extremity.

Appellant therefore did not meet his burden of proof to establish that he is entitled to impairment for his left lower extremity greater than the 10 percent previously awarded.

[13] *Manuel Gill*, 52 ECAB 282 (2001).

[14] *Barry Neutuch*, 54 ECAB 313 (2003).

[15] A.M.A., *Guides*, *supra* note 3 at 509.

[16] *Id*. at 515-21.

[17] *See Melvina Jackson*, 38 ECAB 443 (1987)

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 greater than the 10 percent previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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