United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 13-998**
	)	**Issued: November 1, 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:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2013 appellant, through his attorney, filed a timely appeal from the March 13, 2013 Office of Workers' Compensation Programs' (OWCP) decision denying his request 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 this issue.

ISSUE

The issue is whether appellant met his burden of proof to establish more than a nine percent permanent impairment of his left leg, for which he received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a January 28, 2010 decision,[2] the Board set aside an October 22, 2008 schedule award decision.[3] The Board found that the medical report of the second opinion physician, Dr. Steven Valentino, a Board-certified orthopedic surgeon, was insufficiently rationalized and failed to take into account appellant's preexisting arthritis in determining his left leg impairment. In a September 26, 2011 decision, the Board found the case was not in posture for decision.[4] The Board found that OWCP's medical adviser utilized the findings provided by Dr. Robert Smith, a Board-certified orthopedic surgeon and OWCP referral physician, and based a left leg impairment on a three-millimeter full-thickness cartilage defect although the medical adviser indicated that there were no specific measurements of the thickness of the hyaline cartilage on any clinical examination. The Board directed OWCP to further develop the medical evidence. In an October 2, 2012 decision,[5] the Board set aside OWCP's February 21, 2012 decision, finding that OWCP did not follow the Board's previous instructions. OWCP was instructed to refer appellant for x-ray testing and referral to an appropriate specialist to address the left knee arthritis and to issue an appropriate schedule award decision. The facts and the history contained in the prior decisions are incorporated by reference.

In an August 30, 2012 report, Dr. Richard Laib, a Board-certified diagnostic radiologist, reviewed March 8, 2012 left knee x-rays and provided findings which included that appellant had 1.0 centimeters in minimum joint space width, and the lateral compartment measured 0.7 centimeters. He noted that appellant had irregularity of the articular surface of the medial femoral condyle and slight spurring at the intercondylar margin. Dr. Laib found moderate degenerative changes involving the left knee and no significant narrowing of the medial or lateral compartments.

By letter dated January 17, 2013, OWCP referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Zohar Stark, a Board-certified orthopedic surgeon, who was asked to obtain a new x-ray of appellant's left knee and to comment on the findings.

In a January 31, 2013 report, Dr. Stark noted appellant's history of injury and treatment. On examination appellant walked with a limp avoiding his left lower extremity and was unable to walk in calcaneus or in equinus gait due to left knee pain. Left knee examination revealed no effusion and diffuse tenderness on palpation. There was some muscle atrophy in the quadriceps as circumferences measured 51 centimeters on the left and 53 centimeters on the right. Range of motion (ROM) of the left knee was from 0 to 95 degrees of flexion and there was crepitation at the patellofemoral joint and over the medial compartment, with tenderness on palpation over the

[2] Docket No. 09-290 (issued January 28, 2010).

[3] The Board also reversed the October 22, 2008 decision that terminated appellant's compensation benefits.

[4] Docket No. 11-546 (issued September 26, 2011).

[5] Docket No. 12-804 (issued October 2, 2012).

joint lines. Dr. Stark indicated that the McMurray's, Apley, and Lachman tests were negative; apprehension test was positive; there are no signs of varus/valgus instability; and both knees were in slight varus alignment. He obtained an x-ray study of both knees in standing position. The study revealed degenerative joint changes in the left knee, medial compartment more than lateral compartment, osteophyte formation over the medial aspect of the knee, degenerative changes of the tibial spines, osteophyte formations at proximal and distal poles of the patella, more on the left. Dr. Stark measured the cartilage in both knees and the study revealed eight millimeters of cartilage in the right lateral compartment and six millimeters of cartilage in the left lateral compartment. He also indicated that the study revealed eight millimeters of cartilage in the right medial compartment and seven millimeters of cartilage in the left medial compartment. Appellant had two millimeters of cartilage in the patellofemoral area bilaterally.

Dr. Stark referred to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (hereinafter, A.M.A., *Guides*). Under Table 16-3, Knee Regional Grid, Lower Extremity impairments, appellant had class 1 arthritis of his left knee. Dr. Stark explained that this was the category for primary knee joint arthritis, full-thickness articular cartilage defect and determined that this corresponded to seven percent impairment.[6] He referred to Table 16-6, Functional History Adjustment, Lower Extremities, and used a grade modifier 2, for functional history secondary to gait derangement.[7] Dr. Stark referred to Table 16-7, Physical Examination Adjustment, Lower Extremities, and selected a grade modifier 2 for a finding of two centimeters for reduced circumference of the quadriceps on the left compared to the right.[8] He referred to Table 16-8, Clinical Studies Adjustment, Lower Extremities, and utilized a grade modifier 1 for cartilage interval normal or less than 25 percent compared to opposite uninjured side.[9] Dr. Stark utilized the net adjustment formula to determine that appellant had a net adjustment of two. This resulted in nine percent impairment of the left leg.

On March 4, 2013 OWCP referred Dr. Stark's report to Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and medical adviser. In a March 11, 2013 report, Dr. Berman applied the A.M.A., *Guides* to Dr. Stark's examination findings and concurred with the rating of nine percent impairment to the left leg. He determined that appellant reached maximum medical improvement on January 31, 2013, the date of Dr. Stark's examination.

By decision dated March 13, 2013, OWCP found that appellant had nine percent impairment of the left leg. As appellant had already received schedule awards for eight percent impairment, he was entitled to an additional schedule award for one percent left leg impairment.

[6] A.M.A., *Guides* 516.

[7] *Id.* at 511.

[8] *Id.* at 517.

[9] *Id.* at 519.

LEGAL PRECEDENT

The schedule award provision of FECA[10] and its implementing regulations[11] sets 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. For decisions issued after May 1, 2009, the A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[12]

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).[13] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[14]

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 OWCP's medical adviser providing rationale for the percentage of impairment specified.[15]

ANALYSIS

OWCP referred appellant for a second opinion examination and evaluation by Dr. Stark, who found that appellant had nine percent impairment of the left leg. Dr. Berman, a medical adviser, concurred with Dr. Stark's rating of nine percent impairment of the left lower extremity.

Dr. Stark and Dr. Berman utilized the Knee Regional Grid, Table 16-3, to identify a class 1 default value, grade C, seven percent impairment based a three-millimeter cartilage interval, full-thickness articular cartilage defect or un-united osteochondral fracture. The physicians utilized the Functional History Adjustment Grid and grade modifiers, Table 16-6, grade modifier 2 for gait derangement[16]; Table 16-7, Physical Examination Adjustment,[17] grade

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404.

[12] FECA Bulletin No. 09-03 (issued March 15, 2009). A.M.A., *Guides* (6th ed. 2008).

[13] *Id.* at 494-531*; see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[14] *Id.* at 521.

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

[16] A.M.A., *Guides* 516.

[17] *Id.* at 517.

modifier 2 for a two-millimeter reduced circumference of quadriceps on the left compared to the right; and Table 16-8, Clinical Studies Adjustment, grade modifier of 1, for a cartilage interval normal or less than 25 percent loss compared to the opposite knee.[18]

After determining the impairment class and default grades, Dr. Stark and Dr. Berman applied the grade modifiers in the net adjustment formula to calculate a net adjustment.[19] The final impairment grade is determined by adjusting the grade up or down from the default value C by the calculated net adjustment. Regarding a functional history grade, they assigned a grade modifier 2. Regarding a physical examination grade modifier, they assigned a grade modifier 2 based upon appellant's reduced circumference of the quadriceps on the left compared to the right.[20] Applying the net adjustment formula resulted in a grade modifier of +2, which resulted in a grade adjustment from C to E. The corresponding lower extremity impairment for a class 1, grade C is nine percent.[21] The Board finds that Dr. Stark and Dr. Berman properly applied the A.M.A., *Guides* to rate impairment to appellant's left leg. Their impairment rating represents the weight of medical evidence. As appellant previously received schedule awards totaling eight percent of the left knee region, he was entitled to an additional one percent. He has not submitted evidence to support a greater impairment.

On appeal, appellant's representative questioned the findings of Dr. Stark and why the report of Dr. Laib, a Board-certified diagnostic radiologist, was not utilized. The Board notes that Dr. Stark obtained a new x-ray and provided his findings on examination. As noted above, his report comports with the A.M.A., *Guides* and rated nine percent impairment to the lower extremity. The report from Dr. Laib is of limited probative value as it merely contained findings on diagnostic testing and no opinion on impairment.

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 met his burden of proof to establish that he has more than nine percent impairment of the left lower extremity.

[18] *Id.* at 519.

[19] Net Adjustment = (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). Section 15.3d, A.M.A., *Guides* 411.

[20] A.M.A., *Guides* 517.

[21] *Id.* at 511.

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2013
Washington, DC

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

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

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