

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

G.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Milwaukee, WI, Employer)

**Docket No. 13-1835
Issued: March 19, 2014**

Appearances:
Appellant, pro se
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 August 2, 2013 appellant filed a timely appeal from a June 5, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUE

The issue is whether appellant has more than a one percent permanent impairment to his right leg.

FACTUAL HISTORY

On October 24, 2011 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury in the performance of duty on October 13, 2011. He was walking up steps when he felt a pulling sensation on the back of his

¹ 5 U.S.C. § 8101 *et seq.*

right kneecap. OWCP accepted the claim for a right medial meniscus tear. Appellant underwent a partial medial meniscectomy on November 9, 2011.

The record indicates that appellant also filed a claim on February 15, 2012 for a consequential right foot injury. The claim was administratively combined with the present right knee claim and was accepted for right plantar fasciitis and right metatarsalgia.

In a state workers' compensation form report dated April 3, 2012, Dr. Jeffrey Stephany, a Board-certified orthopedic surgeon, advised that appellant had a five percent impairment of the right knee. He checked a box "yes" that the healing period had ended. In a treatment note dated April 3, 2012, Dr. Stephany reported that appellant had a normal gait, with full range of motion, negative McMurray's, and a knee stable to varus and valgus stress. In a report dated April 23, 2012, he diagnosed a right medial meniscus tear with subsequent surgery. Dr. Stephany stated that appellant "had full motion, good power and a good clinical outcome consistent with the standard five percent disability rating at the level of the knee." In an April 25, 2012 treatment note, he stated that appellant had occasional patellofemoral pain.

OWCP referred the case to Dr. Sarrjai Shukla, an OWCP medical adviser for evaluation. In a report dated May 13, 2012, the medical adviser identified Table 16-3 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The medical adviser indicated that the default impairment was two percent for the right leg. After applying the net adjustment formula with grade modifier 0 for functional history and physical examination, the medical adviser opined that appellant had a one percent right leg permanent impairment. Dr. Shukla stated that a grade modifier for clinical studies was not applicable. The date of maximum medical improvement was reported as April 3, 2012.

In a decision dated August 15, 2012, OWCP granted appellant a schedule award for a one percent right leg permanent impairment. The period of the award was 2.88 weeks commencing April 3, 2012.

On October 22, 2012 appellant requested reconsideration. He contended that his impairment should be five percent, as supported by Dr. Stephany. Appellant indicated that he was enclosing an August 29, 2012 report from Dr. Stephany, who provided results on examination. Dr. Stephany reiterated his opinion that appellant had a five percent disability rating at the knee "consistent with a work-related injury standard compensation."

On November 4, 2012 Dr. Christopher Gross, an OWCP medical adviser, stated that he agreed with Dr. Shukla with respect to the right leg and that Dr. Stephany had not used the A.M.A., *Guides* in assessing impairment. He also indicated that there was no evidence of an impairment based on plantar fasciitis or metatarsalgia.

By decision dated November 15, 2012, OWCP reviewed the case on its merits and denied modification. It found that the medical evidence was insufficient to warrant any increased impairment to appellant's right leg.

On February 22, 2013 appellant again requested reconsideration. He submitted an August 31, 2012 report from Dr. Stephany, who again opined that appellant had five percent impairment "according to standard of care in work-related injuries and a good result." On

November 30, 2012 Dr. Stephany, again reiterated that appellant, had a five percent permanent impairment. He did not provide any new examination results. Dr. Stephany stated generally that he understood that the guidelines had changed, but this made no sense as five percent was a standard rating within orthopedics for a partial meniscectomy with a good outcome.

In a report dated May 13, 2013, Dr. David H. Garelich, an OWCP medical adviser, reviewed the record. He found that the current A.M.A., *Guides* did not support more than one percent impairment. Dr. Garelich noted Dr. Stephany's rating but advised that it did not conform to the current A.M.A., *Guides*. There was no evidence to support greater than one percent impairment.

By decision dated June 5, 2013, OWCP denied modification of the prior decisions. It found that the medical evidence did not establish more than a one percent right leg impairment.

LEGAL PRECEDENT

Section 8107 of FECA 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.² 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.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁴

With respect to a knee impairment, the A.M.A., *Guides* provides a regional grid at Table 16-3. The class of impairment (CDX) is determined based on specific diagnosis and then the default value for the identified CDX is determined. The default value grade C may be adjusted by using grade modifiers for Functional History (GMFH), Table 16-6, Physical Examination (GMPE) Table 16-7 and Clinical Studies (GMCS), Table 16-8. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁵

ANALYSIS

Appellant's physician, Dr. Stephany, provided an opinion that appellant had a five percent right leg impairment based on the partial medial meniscectomy. As noted above, the rating of permanent impairment under FECA must be based on application of the sixth edition of the A.M.A., *Guides*. While Dr. Stephany referred to five percent as a "standard" orthopedic rating for a partial meniscectomy with a good result, the only applicable standard under FECA is

² 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).

³ A. *George Lampo*, 45 ECAB 441 (1994).

⁴ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁵ The net adjustment is up to +2 (grade E) or -2 (grade A).

the A.M.A., *Guides*. As he did not explain how he derived at his impairment rating in accordance with the sixth edition, the opinion of Dr. Stephany is of reduced probative value.

The only physician of record applying the A.M.A., *Guides* was Dr. Garelich. Under Table 16-3, a partial medial meniscectomy is a CDX class 1 impairment, with a default grade C leg impairment of two percent.⁶ The medical adviser applied the net adjustment formula, using grade modifiers zero for physical examination (full range of motion, stable knee) and zero for functional history (normal gait) under Table 16-6 and Table 16-7.⁷ Dr. Stephany did not refer to any clinical studies and the medical adviser found they were not applicable. Applying the above formula, the net adjustment is $(0-1) + (0-1) = -2$ or a grade A impairment of one percent under Table 16-3.⁸

The Board finds that this represents the weight of the medical evidence on the issue. The medical adviser applied the A.M.A., *Guides* and explained his findings. Dr. Stephany did not provide any opinion based on application of the sixth edition of the A.M.A., *Guides*.

The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant's impairment was one percent, he is entitled to one percent of 288 weeks or 2.88 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.⁹ In this Dr. Stephany had indicated that appellant reached maximum medical improvement in an April 3, 2012 form report.

On appeal, appellant stated that he did not feel that one percent was sufficient given his medical conditions. For the reasons noted above, the Board finds that the probative evidence of record does not establish more than a one percent right leg permanent impairment. Appellant may request an increased schedule award and submit to OWCP new and relevant evidence with respect to an employment-related permanent impairment.

CONCLUSION

The Board finds that appellant has not established more than a one percent right leg permanent impairment.

⁶ A.M.A., *Guides* 509, Table 16-3.

⁷ *Id.* at 516-17.

⁸ *Id.* at 509, Table 16-3.

⁹ *Albert Valverde*, 36 ECAB 233, 237 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 5, 2013 is affirmed.

Issued: March 19, 2014
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