United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 15-1034**
	)	**Issued: August 10, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Humacao, PR, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 6, 2015 appellant, through counsel, filed a timely appeal from a March 31, 2015 merit decision of the Office of Workers' Compensation Programs[1] (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 established more than a seven percent right leg permanent impairment.

[1] In the March 11, 2015 decision, OWCP found appellant had not established a ratable permanent impairment for the right leg. The March 31, 2015 decision, however, found appellant had a seven percent permanent impairment to the right leg for which a schedule award had been granted. Accordingly, the Board will take jurisdiction over the March 31, 2015 OWCP decision.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 27, 2010 appellant, then a 53-year-old sales associate, filed a traumatic injury claim (Form CA-1) alleging a right knee injury in the performance of duty on May 1, 2010 when he bent down to pick up a heavy package. He underwent right knee surgery on June 25, 2010 to repair a torn medial meniscus. OWCP accepted the claim on November 15, 2010 for a right knee medial meniscus tear and arthroscopic surgical repair.[3]

Appellant underwent additional right knee surgery on June 21, 2011. In a report of that date, Dr. Manuel Soares, an orthopedic surgeon, indicated that a right knee arthroscopic medial meniscectomy and excision of synovial plica and medial shelf had been performed. Appellant submitted a Form CA-7 (claim for compensation) on June 7, 2011 requesting a schedule award.

By decision dated July 21, 2011, OWCP denied appellant's claim for a schedule award, finding that the medical evidence did not show he had reached maximum medical improvement.

On August 2, 2013 OWCP prepared a statement of accepted facts and referred appellant for a second opinion examination on September 6, 2013. Appellant did not attend the scheduled examination on September 6, 2013, or the rescheduled examination on October 11, 2013.

OWCP denied appellant's claim for a schedule award by decision dated October 31, 2013 because appellant had not attended the scheduled second opinion examinations and because it had failed to submit any medical evidence to establish a permanent impairment.

On July 23, 2014 appellant requested reconsideration and submitted a July 9, 2014 report from Dr. Martin Fritzhand, a Board-certified urologist. Dr. Fritzhand provided a history and results on examination. He reported that appellant continued to have knee pain, with diminished range of motion, and some difficulty in performing household chores. With respect to permanent impairment, Dr. Fritzhand opined that appellant had a seven percent impairment to the right leg based on the meniscal injury. He identified Table 16-3 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), and diagnosed meniscal injury with total meniscectomy. According to Dr. Fritzhand, appellant's impairment was seven percent, using grade modifiers one for Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).

The case was referred to an OWCP medical adviser for review. In a report dated February 24, 2015, the medical adviser agreed with Dr. Fritzhand's opinion as to seven percent right leg impairment. The medical adviser reported the date of maximum medical improvement as July 9, 2014.

By decision dated March 11, 2015, OWCP denied modification of the October 31, 2013 decision. It stated that the evidence did not show a permanent impairment as of October 31, 2013.

[3] The record indicates appellant also had a claim for injury on November 9, 2010 that was accepted for a neck strain (OWCP File No. xxxxxx967).

In a decision dated March 31, 2015, OWCP issued a schedule award for a seven percent right leg permanent impairment. The period of the award was 20.16 weeks from July 9, 2014.

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* provide a regional grid at Table 16-3.[7] The Class of Diagnosis (CDX) is determined based on specific diagnosis, and then the default value for the identified class of diagnosis is determined. The default value (grade C) may be adjusted by using grade modifiers 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]

ANALYSIS

In the present case, Dr. Fritzhand identified Table 16-3 and the diagnosis of a meniscal injury with a total meniscectomy (medial or lateral). This is a class of diagnosis 1 impairment under Table 16-3, with a default (grade C) impairment of seven percent.[9] Dr. Fritzhand then found that the grade modifiers for functional history, physical examination, and clinical studies were 1. This is consistent with his findings in the July 9, 2014 report. Applying the above formula, there was no adjustment from the grade C impairment of seven percent.

Pursuant to OWCP procedures, the case was reviewed by the medical adviser.[10] In his report dated February 24, 2015, the medical adviser concurred with Dr. Fritzhand's opinion. The Board accordingly finds that the medical evidence of record supports the March 31, 2015 decision finding that appellant had a seven percent right leg impairment. Dr. Fritzhand provided a July 9, 2014 report describing the impairment and a probative medical opinion as to permanent

[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 (March 15, 2009).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013).

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

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

[10] *Supra* note 7 at Chapter 2.808.6(f) (February 2013).

impairment under the A.M.A., *Guides*. There is no evidence of record showing greater impairment.

The Board notes that 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 seven percent, he is entitled to seven percent of 288 weeks, or 20.16 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.[11] In this case, the medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Fritzhand. The award, therefore, properly ran for 20.16 weeks commencing on July 9, 2014.

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 the evidence does not establish more than a seven percent permanent impairment to the right leg.

[11] *Albert Valverde*, 36 ECAB 233, 237 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2015 is affirmed.

Issued: August 10, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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