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

| | | |
|---|---|---|
| **C.E., Appellant** | ) | |
| **and** | ) | **Docket No. 15-0805** |
| | ) | **Issued: July 17, 2015** |
| **U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Syracuse, NY, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On February 26, 2015 appellant filed a timely appeal from a January 23, 2015 merit 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 this case.

### ***ISSUE***

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

### ***FACTUAL HISTORY***

On September 6, 2004 appellant, then a 50-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries to his right knee and hip in the

[1] 5 U.S.C. § 8101 *et seq.*

performance of duty on August 28, 2004 when he was pushing an over-the-road container to the dumpster. He did not stop work. Appellant submitted an emergency room report dated August 28, 2004 from Dr. Mark Barasz, Board-certified in emergency medicine, who diagnosed right hip strain and right knee clicking, probably due to cartilage tear. OWCP initially considered the claim as a minimal injury with no lost time from work, and did not issue a decision with respect to the claim.

On July 18, 2011 appellant submitted a Form CA-7 (claim for compensation) requesting a schedule award. In an undated letter, he requested a referral for a second opinion examination with respect to his knee. Appellant noted two prior claims for injury.[2] He submitted an August 12, 2010 magnetic resonance imaging (MRI) scan of the right knee from Dr. Michael Arcomano, a radiologist, who diagnosed a torn posterior horn of the medial meniscus, and noted similar findings on a September 3, 2004 MRI scan.

By letter dated August 11, 2011, OWCP advised appellant that it had not initially adjudicated his claim as it was considered a minor injury with no lost time. It found that the claim was accepted for right hip strain. OWCP stated that the evidence was not sufficient to establish a right knee injury.

OWCP prepared a statement of accepted facts and referred appellant to Dr. Charles Jordan, a Board-certified orthopedic surgeon. In a report dated February 9, 2012, Dr. Jordan provided a history, review of medical evidence and results on examination. He opined that appellant had sustained a right knee medial meniscus tear, resulting in a three percent right leg impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition). With respect to the right hip, Dr. Jordan opined that appellant had a two percent right leg impairment, based on the diagnosis of hip strain. He found appellant had reached maximum medical improvement (MMI) in August 2010, when he finished physical therapy for the right knee.

In a report dated March 6, 2012, an OWCP medical adviser also opined that appellant had a five percent right leg impairment. He found a three percent impairment based on the right knee and two percent for the right hip. The medical adviser reported the date of MMI was August 20, 2010.

In a decision dated April 5, 2012, OWCP issued a schedule award for a five percent permanent impairment to the right leg. The period of the award was 14.40 weeks from August 20, 2010.

On May 9, 2012 appellant requested a review of the written record by an OWCP hearing representative. In a decision dated August 2, 2012, the hearing representative affirmed the April 5, 2012 schedule award decision. He noted that OWCP should make a formal

[2] Appellant had a claim for a left shoulder injury on July 7, 2006 while pushing a container. By decision dated April 1, 2008, he received a schedule award for a 14 percent permanent impairment to his left arm. Appellant also filed an occupational disease claim on November 3, 2008 alleging a right shoulder injury casually related to his federal employment. Pursuant to this claim, he received a schedule award for an eight percent permanent impairment to his right arm. In addition, appellant has a claim for a left knee injury on July 23, 2010. His claim for a schedule award pursuant to this claim was denied by decision dated April 26, 2012.

determination as to whether the right knee condition was causally related to the accepted injury. It noted, however, that preexisting conditions are to be included in schedule awards and, that since the right knee was included in the schedule award, even if the right knee were accepted it would not increase the schedule award.

On July 7, 2014 appellant submitted a Form CA-7 requesting an additional schedule award. He did not submit any medical evidence regarding a permanent impairment. By decision dated May 12, 2014, OWCP denied the claim.

Appellant submitted an August 7, 2014 report from Dr. Darryl Auston, an orthopedic surgeon, on September 5, 2014. Dr. Auston provided results on examination, noting range of motion in the right knee of 95 degrees. He reported right hip flexion/extension was 55 degrees, with full range of motion for internal and external rotation. The right hip strength was 5/5. Dr. Auston completed a worksheet indicating that appellant's diagnosis-based impairment to the right hip was seven percent, based on a diagnosis of a strain and tendinitis. For the right knee, the diagnosis-based impairment was two percent. Dr. Auston also found a 10 percent impairment based on loss of range of motion in the right knee and 10 percent for the right hip. He added the impairments for a total 29 percent right leg impairment.

OWCP again referred appellant to Dr. Jordan. In a report dated December 9, 2014, Dr. Jordan provided results on examination and review of medical evidence. He indicated that appellant had full extension and flexion to 100 degrees for the right knee. Flexion of the hip was 90 degrees, with 30 degrees internal rotation, and 35 degrees external rotation. Dr. Jordan stated that the diagnoses with respect to the work injury were right hip strain and torn medial meniscus of the right knee. With respect to diagnostic tests, he noted a March 24, 2014 MRI scan showed mild hypersensitivity over the trochanteric bursa, and an April 28, 2014 bone scan showed mild increased uptake over the greater trochanter on the right. Dr. Jordan stated that his opinion as to the degree of permanent impairment had not changed. He reported that any changes noted in the diagnostic tests would not be related to the 2004 injury.

In a report dated January 6, 2015, the medical adviser also opined that there was no change in appellant's permanent impairment to the right leg. He noted that Dr. Jordan had commented that an MRI scan and bone scan had shown inflammation of the right trochanter area of the hip, whereas in 2012 it was primarily gluteal pain. The medical adviser stated that this did not affect the final rating.

By decision dated January 32, 2015, OWCP found that appellant was not entitled to an additional schedule award. It found the weight of the medical evidence did not establish an additional impairment to the right leg.

## ***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.[3] 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.[4] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.[5]

With respect to a knee impairment, the A.M.A., *Guides* provide a regional grid at Table 16-3. The Class of Diagnosis (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).[6] For the hip, the regional grid is found at Table 16-4.[7] The hip impairment is determined using the grade modifier and adjustment formula noted above.

## ***ANALYSIS***

In the present case, OWCP issued a schedule award on April 5, 2012 for a five percent impairment to the right leg. The impairment was based on the application of the diagnosis-based regional grids for the knee (three percent) and the hip (two percent). Appellant seeks an additional schedule award and submitted the August 7, 2014 report from Dr. Auston.

The evidence from Dr. Auston, however, is of diminished probative value on the issue presented. Dr. Auston found a 29 percent impairment, based on loss of range of motion (20 percent), and diagnosis-based impairments of 7 percent to the hip and 2 percent to the knee. The Board notes that the A.M.A., *Guides* clearly state that a range of motion impairment is not to be combined with the diagnosis-based impairment. A range of motion impairment stands alone.[8] Therefore a finding based on the addition or combination of a range of motion impairment with the diagnosis-based impairments cannot be accepted as valid.

In addition, the A.M.A., *Guides* state the diagnosis-based impairment is "the primary method of evaluation for the lower limb."[9] The diagnosis-based impairments at Table 16-3 (knee) and Table 16-4 (hip) include loss of motion in evaluating the impairment. Dr. Auston did

[3] 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).

[4] *A. George Lampo*, 45 ECAB 441 (1994).

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

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

[7] A.M.A., *Guides* 512, Table 16-4.

[8] *Id*. at 500.

[9] *Id*. at 497.

not explain why a range of motion method was appropriate in the case. Moreover, he did not properly document a range of motion impairment. For example, hip motion impairments are evaluated under Table 16-24, which requires specific measurements for flexion, extension, internal and external rotation, abduction, adduction, and abduction contracture.[10] Dr. Auston describes a finding of "flexion/extension" of 55 degrees, with no loss of internal or external rotation. He omits findings with respect to other required measurements. For this reason, Dr. Auston did not properly document a "moderate" impairment of 10 percent under Table 16-24.[11]

Dr. Auston did not explain his right hip diagnosis-based impairment using Table 16-4. Under Table 16-4, a class 1 impairment for the diagnosis of a "strain; tendinitis; or [history of] ruptured tendon" is determined under one of three diagnostic criteria: (1) palpatory and/or radiographic findings, (2) mild motion deficits, or (3) moderate motion deficits and/or significant weakness.[12] Dr. Auston chose the third criteria, but his examination did not support any weakness, and as noted above, he did not document a moderate motion deficit.

Dr. Jordan, the second opinion physician, reiterated, in his December 9, 2014 report, his opinion that appellant had a five percent right leg impairment. He based his impairment findings on the diagnosis-based method found in Table 16-3 and Table 16-4. This is, the primary method for determining leg impairments. In addition, Dr. Jordan's application of these tables was consistent with his examination findings.

For the right hip, Dr. Jordan used "mild motion deficits" which has a default impairment of two percent.[13] Applying the adjustment formula, he found a grade modifier one for physical examination and functional history, and zero for clinical studies. This results in a -1 or grade B impairment, which is the same as the default grade C impairment of two percent.[14]

As to the right knee, Dr. Jordan used the diagnosis of partial meniscal tear, and adjusted the impairment to grade E (three percent) based on grade modifier two for physical examination and functional history, and one for clinical studies.[15] The medical adviser concurred with Dr. Jordan's findings in his January 6, 2015 report.

The Board finds that the weight of the probative medical evidence in this case does not establish more than a five percent permanent impairment to the right leg.[16] On appeal, appellant

[10] *Id*. at 549, Table 16-24.

[11] The Board also notes that knee range of motion under Table 16-23 requires flexion and flexion contracture measurements. *Supra* note 10.

[12] *Supra* note 7.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 509, Table 16-3.

[16] The Board notes that the right knee condition has never been accepted as an employment-related condition.

notes that Dr. Auston found a 29 percent impairment to his right leg. This report has been reviewed by the Board and it is not sufficient to establish a greater right leg impairment than OWCP awarded or to create a conflict with Dr. Jordan and the medical adviser. Appellant may, at any time, request an additional schedule award based on the submission of new medical evidence regarding an employment-related permanent impairment.

## ***CONCLUSION***

The Board finds that appellant has not established that he has more than a five percent permanent impairment to his right leg.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 23, 2015 is affirmed.

Issued: July 17, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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