United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 15-1836**
	)	**Issued: November 24, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Woodland Hills, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 21, 2015 appellant filed a timely appeal from a July 2, 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 seven percent permanent impairment to his left leg.

FACTUAL HISTORY

On January 28, 2013 appellant, then a 61-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries in the performance of duty on January 18, 2013. On the claim form he described the incident as falling after stepping out of his

[1] 5 U.S.C. § 8101 *et seq.*

truck, injuring his knees, neck, shoulder, and head. OWCP accepted the claim for a left knee strain, left lateral collateral ligament sprain, and temporary aggravation of left knee osteoarthritis. The record indicates that appellant received wage-loss compensation through July 31, 2013.

According to the evidence of record, the current OWCP case file represents a master file with five prior claims as subsidiary case files. A statement of accepted facts (SOAF) dated February 6, 2014 indicates that none of the subsidiary claims were accepted for a left leg injury. The prior claims involved the shoulders, the right knee, and the back.[2] With respect to the back, appellant had filed a July 17, 2012 claim for injury that was accepted for temporary aggravation of displacement of lumbar intervertebral disc without myelopathy.

OWCP referred appellant for a second opinion examination by Dr. Richard Rogachefsky, a Board-certified orthopedic surgeon, for an opinion as to a permanent impairment of the shoulders or right leg. In a report dated March 5, 2014, Dr. Rogachefsky opined that appellant had 21 percent right leg permanent impairment, 11 percent right arm permanent impairment and 6 percent left arm permanent impairment. The right leg permanent impairment was based on a total right knee replacement. As to permanent impairment to the leg based on a spinal condition, Dr. Rogachefsky found no impairment as there was no objective evidence of a sensory or motor deficit.

On October 16, 2014 appellant submitted a letter dated October 13, 2014, asserting that he had not received a schedule award for his back under the July 17, 2012 claim or for his left leg under the current January 18, 2013 claim.[3] OWCP referred appellant for a second opinion examination by Dr. Mark Bernhard, an osteopath and a Board-certified physiatrist. Dr. Bernhard was asked to provide an opinion as to a left leg permanent impairment based on the accepted left knee and back conditions.

In a report dated November 20, 2014, Dr. Bernhard provided a history and results on examination. He was asked to address the issue of the accepted left knee osteoarthritis. Dr. Bernhard noted that there were multiple conditions with respect to the left knee including the left knee lateral meniscus tear. He noted that in rating impairment per the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) when there is more than one diagnosis, according to Chapter 16, page 499, "the one that provides the most clinically accurate impairment rating should be used; this will generally be the more specific diagnosis. Typically, one diagnosis will adequately characterize the impairment and its impact on ADLs." Dr. Bernhard determined that appellant was at maximum medical improvement (MMI) as of August 1, 2013 and that impairment should be calculated using the knee regional grid for lower extremity impairment, Table 16-3, pages 509-511. He opined that the proper diagnosis is tricompartmental osteoarthritis with mild cartilage thinning in the

[2] OWCP accepted a right shoulder sprain (File No. xxxxxx941), a left acromioclavicular sprain, left rotator cuff strain, and left shoulder disorder of bursae and tendon (File No. xxxxxx307), permanent aggravation of right knee osteoarthritis (File No. xxxxxx207), left shoulder disorder of bursae and tendon, left shoulder and upper arm strain, and left thoracic back strain (File No. xxxxxx548).

[3] On June 18, 2014 OWCP issued schedule award decisions with respect to the arms and right leg in OWCP File Nos. xxxxxx941, xxxxxx307, xxxxxx207, xxxxxx548.

tibiofemoral compartment, patchy areas of near full-thickness to full-thickness cartilage loss, and severe patellar trochlear cartilage thinning with large areas of cartilage denudation. Dr. Bernhard found the diagnostic criteria key factor as a class 1 arthritis primary knee joint arthritis, resulting in a mid-range seven percent lower extremity impairment. He then relied upon x-rays taken on January 14, 2015 to find a clinical studies grade modifier of 1 per Table 16-8, but he noted that it was inapplicable as the x-rays were used already in the diagnosis. Dr. Bernhard found that functional history adjustment would most accurately be listed under Table 16-6, grade modifier 1, mild problem, with mild deficit, antalgic limp with asymmetric shortened stance corrected with footwear and orthotics. He calculated lower instrument of 82 would result in a grade modifier of 1, mild deficit, per Table 16-6. Per Table 16-7, Dr. Bernhard found that physical examination adjustment would indicate minimal palpatory findings consistently documented without observed abnormality most accurately resulting in a grade 1 modifier. He concluded that functional history modifier is 1, plus physical examination modifier 1 minus diagnostic criteria 1 (1 minus 1 equals 0). Therefore, the net adjustment formula results in a 0 with the left lower extremity impairment being seven percent for the left knee condition.

An OWCP medical adviser submitted a report dated March 19, 2015. He opined that there was no impairment to the left leg based on the accepted back condition. In a report dated May 18, 2015, the medical adviser indicated that he concurred with the opinion of Dr. Bernhard that there was seven percent left leg impairment. He identified Table 16-3 for the diagnosis of primary knee joint arthritis. As to the date of MMI, the medical adviser opined that this was November 20, 2014, the date of examination by Dr. Bernhard.

By decision dated July 2, 2015, OWCP issued a schedule award for seven percent permanent impairment of the left leg. The period of the award was 20.16 weeks from November 20, 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]

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[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] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.801.5a (February 2013) and Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

With respect to a knee impairment, the A.M.A., *Guides* provide a regional grid at Table 16-3 for a diagnosis-based impairment.[7] 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).[8]

ANALYSIS

In the present case, OWCP issued a schedule award for seven percent permanent impairment to the left leg. Appellant was referred to Dr. Bernhard for a second opinion evaluation. In a report dated November 20, 2014, Dr. Bernhard opined that appellant had a seven percent left leg impairment under Table 16-3.

Dr. Bernhard identified the diagnosis as primary knee joint arthritis. Under Table 16-3, a class 1 impairment (mild problem) has a default (grade C) leg impairment of seven percent.[9] The adjustment formula noted above is then applied to determine if the grade C impairment should be adjusted. Dr. Bernhard explained that for functional history under Table 16-6 he would assign grade modifier 1.[10] For physical examination, a grade modifier 1 was also applied.[11] As to clinical studies, Dr. Bernhard indicated that this was used in the primary placement in the regional grid, and would not be used in the adjustment calculation.[12] Applying the adjustment formula, (1-1) + (1-1) results in no adjustment from the grade C default impairment.

The Board finds that Dr. Bernhard properly applied the A.M.A., *Guides* in determining the degree of permanent impairment based on the left knee. In accord with OWCP procedures, the medical evidence was reviewed by an OWCP medical adviser for an opinion as to the degree of permanent impairment under the A.M.A., *Guides*.[13] In a report dated March 19, 2015, the medical adviser concurred that appellant's left leg permanent impairment was seven percent.

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[7] The A.M.A., *Guides* note that the diagnosis-based impairment *id.* the primary method of evaluation for the leg. A.M.A., *Guides* 497.

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

[9] A.M.A., *Guides* 511, Table 16-3.

[10] *Id*. at 516, Table 16-6 provides that grade modifier 1 is for antalgic gait with asymmetric shortened stance, corrected with modified footwear.

[11] *Id.* at 517, under Table 16-7, grade modifier 1 for the knee is grade 1 Lachman's test, and slight laxity of the patellar mechanism.

[12] *Id*. at 515-16, according to the A.M.A., *Guides*, when a factor is used to determine the diagnosis in the regional grid, it is not used again in the impairment calculation. .

[13] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

The Board notes that in requesting an opinion as to the left leg permanent impairment, the October 20, 2014 questions from OWCP posed to Dr. Bernhard also noted the accepted back condition from the July 17, 2012 employment injury. In this regard, Dr. Bernhard found no evidence of radiculopathy into the leg. There was no evidence of any additional impairment to the left leg based on a lumbar condition. As to the back itself, it is well established that neither FECA nor its regulations provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of "organ" under FECA.[14]

The probative evidence of record therefore indicates that OWCP properly determined that appellant has seven percent left leg permanent impairment. Both Dr. Bernhard and the OWCP medical adviser found seven percent impairment based on the left knee impairment, and no probative contrary evidence was submitted.

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 is 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 MMI from residuals of the employment injury.[15] In this case, the OWCP medical adviser properly concluded that the date of MMI was the date of examination by Dr. Bernhard. The award therefore properly runs for 20.16 weeks commencing on November 20, 2014.

On appeal, appellant indicated that he hoped this appeal "includes all cases as I sent appeals on all" and he refers to Dr. Rogachefsky. The appeal in this case is an appeal of the July 2, 2015 schedule award decision. The Board's jurisdiction is limited to final adverse decisions of OWCP issued within 180 days of the filing of the appeal.[16] There are no other decisions over which the Board may exercise jurisdiction under the current OWCP master file or any of its subsidiary files. Dr. Rogachefsky did not address a left leg permanent impairment and the July 2, 2015 decision was not based on his report. Appellant also indicates that he does not understand why he was found to have no permanent impairment to his back, because his back is constantly painful. As noted above, under FECA there is no provision for a schedule award to the back. Based on the probative evidence, OWCP properly found appellant had seven percent left leg permanent impairment.

Appellant can request an increased schedule award at any time based on the submission of new medical evidence showing an increased employment-related permanent impairment to a scheduled member or function of the body.

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[14] *See James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

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

[16] 20 C.F.R. § 501.3(e).

CONCLUSION

The Board finds that appellant does not have more than seven percent permanent impairment to his left leg.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 2, 2015 is affirmed.

Issued: November 24, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board