United States Department of Labor
Employees' Compensation Appeals Board

W.D., Appellant	)	
and	)	**Docket No. 15-1469**
	)	**Issued: October 7, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Bedford Park, IL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 29, 2015 appellant filed a timely appeal from a March 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 a two percent permanent impairment of his right leg for which he received a schedule award.

FACTUAL HISTORY

On February 19, 2014 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date he sustained a right leg hamstring strain when walking on a snowy/icy sidewalk and his right leg slipped forward and stretched awkwardly. He

[1] 5 U.S.C. § 8101 *et seq.*

sought treatment that same date at Ingalls Memorial Hospital. In a February 19, 2014 medical report, Dr. Mark Weissman, Board-certified in emergency medicine, diagnosed right thigh strain. OWCP accepted the claim for sprain of right hip and thigh. Appellant stopped work on February 19, 2014 and received medical and wage-loss benefits.

In a March 5, 2014 medical report, Dr. Joseph G. Thometz, a Board-certified orthopedic surgeon, reported that appellant slipped on ice while at work on February 19, 2014 and felt a pop on the posterior aspect of his right hip. A March 3, 2014 magnetic resonance imaging (MRI) scan revealed a large hematoma posteriorly and avulsion of the hamstring origin off the greater tuberosity. Dr. Thometz diagnosed complete hamstring avulsion and recommended surgery. On March 18, 2014 appellant underwent repair of the right proximal hamstring tear. The surgery was approved by OWCP. In a July 17, 2014 work status note, Dr. Thometz released appellant to regular-duty work on July 26, 2014. The record reflects that appellant returned to full duty on July 26, 2014.

On September 26, 2014 appellant filed a claim for a schedule award (Form CA-7).

By letter dated October 10, 2014, OWCP requested that appellant submit an impairment evaluation from his attending physician in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009). It provided him 30 days to submit the requested impairment evaluation.

In an October 30, 2014 report, Dr. Thometz reported that appellant had reached maximum medical improvement (MMI) regarding his hamstring tendon tear that required surgery on March 18, 2014. He explained that physical therapy had been completed and appellant was able to return to work. Dr. Thometz' permanent impairment evaluation was based on the nature of the injury, the required surgery, and the scarring and disability related to the injury.

Utilizing Table 16-4 of the A.M.A., *Guides*, he diagnosed ruptured tendon pertaining to appellant's injury.[2] Paul Pepich, a physical therapist, explained that mild palpatory findings (residual fascial tightness of the distal hamstrings from the bleeding at the time of the tear, tenderness, and fullness of the quadratus and proximal adductors) and the presence of mild residual weakness represented a class 1, one percent right lower extremity impairment. He determined appellant's functional history grade modifier as 2 due to his lower extremity functional score (LEFS) of 44 percent, his physical examination grade modifier as 1 due to minimal palpatory findings, and his clinical studies grade modifier as 2 due to MRI scan and surgical findings. After modification, Mr. Pepich found that appellant had two percent right lower extremity impairment.

OWCP properly routed Dr. Thometz' report and the case file to Dr. Michael Hellman, an OWCP district medical adviser (DMA) and orthopedic surgeon, for review and a determination on whether appellant sustained a permanent partial impairment of the right leg and date of MMI.

[2] A.M.A., *Guides* 512 (2009).

In a January 20, 2015 medical report, Dr. Hellman reported that he agreed with Dr. Thometz' two percent right lower extremity impairment rating. In accordance with the sixth edition of the A.M.A., *Guides*, he utilized Table 16-4 to determine that appellant's diagnosis of ruptured tendon was class 1, grade C diagnosis with a default value of one percent.[3] Using Table 16-6, Dr. Hellman determined that appellant's functional history (LEFS 45/80) resulted in a grade modifier 2.[4] Utilizing Table 16-7, appellant's physical examination resulted in a grade modifier 1 due to mild pain to palpation.[5] Table 16-8 revealed a grade modifier 1 for clinical studies as the MRI scan of the hamstring showed a tear.[6] Dr. Hellman applied the net adjustment formula which resulted in an adjustment of 1, moving appellant to grade D with an adjusted impairment rating of two percent for the right lower extremity.[7] He opined that appellant reached MMI on July 26, 2014 as his treating physician released him back to work on that date.

By decision dated March 2, 2015, OWCP granted appellant a schedule award for two percent permanent impairment of the right leg. It found that the impairment rating was based on Dr. Thometz' October 30, 2014 report and the DMA's January 20, 2015 report. The date of MMI was noted as July 26, 2014. The award covered a period of 5.76 weeks from July 26 to September 4, 2014.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations set 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.[8] 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[9]

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health. For lower extremity impairments, the evaluator identifies the impairment Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical

[3] *Id.*

[4] *Id.* at 516.

[5] *Id.* at 517.

[6] *Id.* at 519.

[7] *Supra* note 2.

[8] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[9] *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

Examination (GMPE), and Clinical Studies (GMCS).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11] Evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[12]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[13]

ANALYSIS

OWCP accepted appellant's claim for sprain of right hip and thigh. On March 18, 2014 appellant underwent repair of the right proximal hamstring tendon tear which was approved by OWCP. The issue is whether he has more than two percent permanent impairment of the right leg for which he received a schedule award. The Board finds that appellant has not met his burden of proof to establish more than the two percent permanent impairment of the right leg already awarded.[14]

Diagnosis-based impairment is the primary method for evaluating impairment to the lower limb. Impairment is determined first by identifying the relevant diagnosis, then by selecting the class of the impairment: no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss. This provides a default impairment rating, which can be adjusted slightly up or down using grade modifiers or nonkey factors, such as functional history, physical examination, and clinical studies.[15]

In an October 30, 2014 report, Dr. Thometz, appellant's treating physician, determined that appellant has two percent permanent impairment of the right lower extremity based on his surgery, physical examination findings, and review of diagnostic testing. He indicated that according to the Hip Regional Grid, Table 16-4 on page 512, appellant's injury fell under the diagnosis-based category of ruptured tendon which had a default value of one percent under class 1 based on mild palpatory findings and residual weakness.[16] Dr. Thometz further found that, under the grade modifier scheme, appellant's condition meant that his impairment rating moved

[10] *Supra* note at 493-531.

[11] *Id*. at 521.

[12] *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

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

[14] *W.R.*, Docket No. 13-492 (issued June 26, 2013).

[15] *Supra* note 2 at 497.

[16] *Supra* note 2.

to the right of the default value on Table 16-4 which equaled a two percent impairment of the right leg.

OWCP properly routed Dr. Thometz' October 30, 2014 report to Dr. Hellman, an OWCP DMA, for review and a determination on whether appellant sustained a permanent impairment and date of MMI. Dr. Hellman reviewed Dr. Thometz' report and agreed with his assessment that appellant sustained two percent impairment of the right leg. He explained that appellant had a grade modifier 2 for functional history, a grade modifier 1 for physical examination, and a grade modifier 1 for clinical studies. Applying the net adjustment formula, the DMA properly subtracted 1, the numerical value of the class, from the numerical value of the grade modifier for each applicable component (functional history, physical examination, and clinical studies) and then added those values, resulting in a net adjustment of 1 ((2-1) + (1-1) + (1-1)).[17] Application of the net adjustment formula meant that movement was warranted one place to the right of class 1 default value grade C to grade D based on Table 16-4. Therefore, the diagnosis-based impairment rating for appellant's right hip ruptured tendon, yielded a two percent permanent impairment of the right lower extremity.[18]

The Board notes that Dr. Thometz stated that appellant was currently at MMI regarding his hamstring tendon tear, yet did not specify a date. Dr. Thometz noted that, after the March 18, 2014 surgery, appellant completed physical therapy and returned to his normal work duties on July 26, 2014, not having missed a day of work due to this problem since that time. Based on this, Dr. Hellman determined that appellant had reached MMI on July 26, 2014 the date he was released to work full duty by his treating physician. As Dr. Thometz failed to identify a date of MMI and Dr. Hellman provided rationale with his determination, the Board finds that Dr. Hellman properly selected the date of MMI as July 26, 2014.[19]

Thus, the Board finds that Dr. Hellman, serving as OWCP DMA, properly reviewed Dr. Thometz' report and applied the appropriate tables and grading schemes of the A.M.A., *Guides* in determining that appellant had no more than two percent permanent impairment of the right lower extremity for which he received a schedule award.[20] As both physicians agreed on the impairment rating, appellant has not submitted sufficient evidence to establish that he has more than two percent impairment to the right lower extremity.[21]

On appeal, appellant argues that he suffered great hardship as a result of his injury and requested review of his award but that belief, however sincerely held, does not constitute the medical evidence necessary to establish greater impairment. As set forth above, he did not submit probative medical evidence supporting greater percentages of impairment than those awarded.

[17] *Supra* note 11.

[18] *Supra* note 2.

[19] The determination of the date of MMI ultimately rests with the medical evidence. *L.H.*, 58 ECAB 561 (2007).

[20] *W.M.*, Docket No. 11-1156 (issued January 27, 2012).

[21] *B.L.*, Docket No. 12-1240 (issued December 18, 2012).

Appellant may request an 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 established that he has more than a two percent permanent impairment of the right leg for which he received a schedule award.

ORDER

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

Issued: October 7, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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