United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 15-1022**
	)	**Issued: August 17, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Colton, 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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 30, 2015 appellant filed a timely appeal from a March 10, 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 established that he sustained more than 21 percent permanent impairment to his left lower extremity, for which he previously received a schedule award.

On appeal appellant contends that the schedule award should be greater as he lost his job and mobility as a result of his injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 4, 2004 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim (Form CA-1) for a work-related injury to his left knee that occurred on August 25, 2004. He alleged that the injury occurred while pushing up with his legs from a crouched position and attaining standing position. OWCP accepted the conditions of old bucket handle tear of medial meniscus, bilateral; and Pica Syndrome and paid benefits. Surgeries appellant underwent include: July 22, 2008 left knee arthroscopy, debridement of the medial meniscus and lateral meniscus, chondroplasty of the medial femoral condyle; September 26, 2011 right knee arthroscopy with partial medial and lateral meniscectomy; and July 12, 2013 left knee arthroscopy and partial meniscectomy. Appellant has had intermittent periods of work and work stoppage. He has been temporarily totally disabled since the July 12, 2013 surgery.

By decision dated June 29, 2006, OWCP awarded appellant eight percent impairment for loss of use of the left lower extremity. The award ran for 23.04 weeks for the period January 19, 2005 to June 29, 2006. Appellant thereafter requested an increased award. By decision dated December 3, 2009, OWCP awarded an additional 12 percent impairment for loss of use of the left lower extremity, for a total impairment of 20 percent.[2] The award ran for 34.56 weeks for the period February 19 to October 18, 2009.

On February 22, 2012 appellant filed a schedule award claim for a new increased schedule award and submitted new medical evidence in support of the request.

In a January 25, 2012 report, Dr. Ronny Ghazal, a Board-certified orthopedic surgeon, noted the history of injury and appellant's physical examination findings.

On August 3, 2012 OWCP referred appellant's record to its medical adviser for an opinion regarding the degree of permanent impairment of appellant's bilateral lower extremities. In a September 7, 2012 report, an OWCP medical adviser noted that appellant was status post partial medial and partial lateral meniscectomies, both right and left lower extremities. He noted that with the history of right knee arthroscopy on September 26, 2011, a date of maximum medical improvement (MMI) of January 25, 2012 would be reasonable, *i.e.*, four months following the surgical procedure and agreed that the 10 percent right lower extremity impairment for status post partial medial and partial lateral meniscectomy was proper under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The OWCP medical adviser further opined that the record did not document any additional left lower extremity impairment beyond the 20 percent awarded.

Appellant continued to submit medical evidence from Dr. Ghazal regarding treatment of his knee conditions. In a June 13, 2013 progress report, Dr. Ghazal provided an impression of left knee medial meniscus retear with a seven millimeter osteochondral defect in the medial femoral condyle and recommended left knee arthroscopy, which appellant underwent on July 12, 2013. Appellant was temporarily totally disabled for a period following the surgery. On October 24, 2013 he was released to sedentary work. However, on October 24 and

[2] Twenty percent total impairment less eight percent impairment, previously awarded, equaled twelve percent impairment owed appellant.

November 14, 2013, the employing establishment advised no work was available for appellant. Progress reports from Dr. Ghazal continued to report on appellant's lower extremity condition and that he was capable of performing only modified, sedentary-duty work.

In an April 14, 2014 report, Dr. Richard A. Bjama, an orthopedic surgeon, noted the history of injury, presented left knee examination findings, and diagnosed left knee post-traumatic osteoarthritis. Discussion was held with Dr. Ghazal regarding a left total knee arthroplasty and appellant was referred to a different total joint specialist. On April 14, 2014 Dr. Bjama again diagnosed left knee traumatic osteoarthritis and recommended against a total knee replacement.

In a June 10, 2014 report, Dr. Peter Elsissy, a Board-certified orthopedic surgeon, noted the history of injury, appellant's medical course, and diagnosed left knee medial osteoarthritis, for which he recommended medial unicompartmental arthroplasty. He opined that appellant could only work modified, sedentary-duty work and appellant's knee condition was industrial in nature. Appellant underwent a left medial compartment unicompartmental arthroplasty on August 6, 2014.

In a September 8, 2014 report, Dr. David T. Easley, a Board-certified orthopedic surgeon and OWCP referral physician, reviewed a statement of accepted facts and appellant's medical record. He noted examination findings and provided an impression of status post multiple arthroscopic left knee surgeries, status post left unicompartmental knee replacement, status post arthroscopic right knee surgery, and pes anserine bursitis left knee. Dr. Easley opined that appellant was temporarily totally disabled following his August 6, 2014 surgery, which was necessary due to residuals from the August 25, 2004 work injury.

Physical therapy and progress reports were submitted regarding appellant's condition.

In a December 5, 2014 report, Dr. Elsissy noted the history of injury and set forth examination findings. An impression of status post left medial compartment unicompartmental arthroplasty was provided. Dr. Elsissy opined that appellant reached MMI and had permanent work restrictions. He opined that appellant's current left knee condition was industrial in nature. Under the sixth edition of the A.M.A., *Guides*, Dr. Elsissy opined that appellant had 25 percent left lower extremity impairment. Under Table 16-3, page 511, appellant was assigned class 2. Dr. Elsissy accorded a functional history grade modifier 2, physical examination grade modifier 0, and clinical testing grade modifier 0. He found a net adjustment of -4, which resulted in class 2, grade C for 25 percent impairment.

On February 9, 2015 appellant filed a claim for an increased schedule award.

On February 18, 2015 OWCP referred appellant's medical record to its medical adviser for review. In a February 24, 2015 report, an OWCP medical adviser reviewed the medical records of file, including Dr. Elsissy's December 5, 2014 report. He advised that, under Table 16-3, Knee Regional Grid -- Lower Extremity Impairment, a class 2 default rating for status post total knee replacement was 25 percent. A grade 2 modifier for functional history adjustment would result in 0 net adjustment and a physical examination adjustment with a grade modifier of 0 would be a -2 net adjustment. Clinical studies adjustment was not applicable as it was utilized

for class placement. The medical adviser opined that the total net adjustment was -2, not -4 as found by Dr. Elsissy, which would result in a class 2, category A or a 21 percent left lower extremity impairment. As this impairment is 1 percentage point higher than the previously assessed 20 percent, he opined that appellant was entitled to an additional 1 percent impairment of the left lower extremity. The medical adviser further opined that MMI was obtained December 5, 2014, approximately four months following the medial compartment hemiarthroplasty.

By decision dated March 10, 2015, OWCP awarded appellant an additional 1 percent left lower extremity impairment of the left lower extremity, for a total impairment of 21 percent. The award ran for 2.88 weeks for the period December 5 to 25, 2014. It is from this latest decision which appellant has filed his appeal requesting an increased schedule award.

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.[3] 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.[4]

A claimant may seek an increased schedule award if the evidence establishes that he or she sustained an increased impairment at a later date causally related to his or her employment injury.[5] Moreover, OWCP procedure provides that a claim for an increased schedule award may be based on an incorrect calculation of the original award or an increased impairment at a later date which is due to work-related factors. In such a situation, an increased schedule award may be payable if supported by the medical evidence.[6]

The A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF). For upper and lower extremity impairments, the evaluator identifies the impairment Class of

[3] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[4] *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).

[5] *Linda T. Brown*, 51 ECAB 115, 116 (1999); *Paul R. Reedy*, 45 ECAB 488, 490 (1994).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.9 (February 2013). In addition, OWCP procedures provide that a request for reconsideration of a schedule award based on a disagreement with the percentage awarded must be distinguished from a situation where a claimant who previously received an award is filing for an increased impairment due to a worsening of the claimant's medical condition due to deterioration of his condition or increased exposure. Such a request for increased impairment is not subject to the one-year time limitation for reconsideration. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3 (October 2011); *Paul R. Reedy*, *id*.

Diagnosis condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS). The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[7] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[8]

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 percentage of impairment using the A.M.A., *Guides*.[9] In some instances, an OWCP medical adviser's opinion can constitute the weight of the medical evidence. This occurs in schedule award cases where an attending physician indicates that the MMI has been reached and described the permanent impairment of the affected member, but does not offer an impairment rating. In this instance, a detailed opinion by an OWCP medical adviser, who gives a percentage based on reported findings and the A.M.A., *Guides*, may constitute the weight of the medical evidence.[10]

OWCP procedures state that any previous impairment to the member under consideration is included in calculating the percentage of loss, except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.[11]

ANALYSIS

OWCP accepted that appellant sustained conditions of old bucket handle tear of medial meniscus, bilateral; and Pica Syndrome and paid benefits. In a decision dated December 3, 2009, it awarded a total impairment of 20 percent for loss of use of the left lower extremity. Appellant subsequently requested an increased schedule award on February 22, 2012 related to his right lower extremity[12] and February 9, 2015 related to his left lower extremity. By decision dated March 10, 2015, OWCP awarded appellant an additional 1 percent left lower extremity impairment, for a total impairment of 21 percent.

The Board finds that appellant has not established a schedule award greater than 21 percent for the left lower extremity. Both Dr. Elsissy and the medical adviser opined that appellant reached MMI on December 5, 2014, approximately four months following the medial compartment hemiarthroplasty. Dr. Elsissy opined that appellant had 25 percent impairment to

[7] *R.Z.*, Docket No. 10-1915 (issued May 19, 2011).

[8] *J.W.*, Docket No. 11-289 (issued September 12, 2011).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013); *see also L.R.*, Docket No. 14-674 (issued August 13, 2014); *D.H.*, Docket No. 12-1857 (issued February 26, 2013).

[10] *See* Federal (FECA) Procedure Manual, *id*. at Chapter 2.810.8(i) (September 2010).

[11] *Id.* at Chapter 2.808.8.b (February 2013).

[12] OWCP has not issued a final decision regarding impairment to the right lower extremity.

the left lower extremity, while OWCP's medical adviser opined that he had 21 percent impairment to the left lower extremity.

The Board finds that OWCP properly relied on its medical adviser's impairment rating. The medical adviser's opinion was based on the complete record. He properly applied the appropriate portions of the A.M.A., *Guides* to Dr. Elsissy's clinical findings in determining impairment to the left lower extremity. Both Dr. Elsissy and the medical adviser properly noted that under Table 16-3, page 511, appellant had class 2, default 25 impairment as a result of total knee replacement. Dr. Elsissy found that appellant had functional history grade modifier 2, physical examination grade modifier 0, and clinical testing grade modifier 0. He found a net adjustment of -4, which resulted in class 2, grade C for 25 percent impairment, while the medical adviser found a net adjustment of -2, which resulted in class 2, grade A for 21 percent impairment.

The medical adviser provided proper rationale for the percentage of the left lower extremity.[13] He properly identified the default value as 25 percent for class 2, total knee replacement. The medical adviser agreed with Dr. Elsissy that appellant had grade modifiers of 2 for functional history and 0 for physical examination. However, he disagreed that appellant had a modifier of 0 for clinical studies, noting that the objective study was used to place appellant into the correct diagnostic class and thus was not applicable. This is in accordance with section 16.3c and Table 16-8 of the A.M.A., *Guides*, and thus could not be used as a clinical studies modifier and was therefore not applicable.[14]

As noted the default impairment for total knee replacement under class 2 is 25 percent impairment. Utilizing the net adjustment formula to the modifiers provided (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) or (2-2) + (0-2) equals -2. As the net adjustment is -2, the result is a class 2, category A or a 21 percent left lower extremity impairment as the medical adviser found. As appellant was previously awarded 20 percent impairment and is entitled to 21 percent impairment, OWCP properly awarded him an additional 1 percent impairment of the left lower extremity.

On appeal appellant contends that the schedule award should be greater as he lost his job and mobility as a result of his injury. There is a distinction between the concept of disability and that of permanent impairment. Schedule awards are included under FECA to indemnify for the loss of or loss of use of specific members or functions of the body without regard to loss of wage-earning capacity.[15] Furthermore, there is no rationalized medical evidence of record supporting a greater permanent impairment of the left lower extremity impairment than 21 percent.

[13] *See* Federal (FECA) Procedure Manual, *supra* note 9.

[14] A.M.A., *Guides* 518.

[15] *See Lorraine B. Ford*, 10 ECAB 232 (1958); *see also R.L.*, Docket No. 09-1948 (issued June 29, 2010).

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 appellant did not sustain greater than 21 percent impairment to the left lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.[16]

Issued: August 17, 2016
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

[16] James A. Haynes, Alternate Judge, participated in the original decision but was longer a member of the Board effective November 16, 2015.