United States Department of Labor
Employees' Compensation Appeals Board

R.I., Appellant	)	
	)	**Docket No. 17-0920**
and	)	**Issued: July 21, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Lincolnton, NC, 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 March 21, 2017 appellant filed a timely appeal from a March 9, 2017 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 met his burden of proof to establish more than 21 percent permanent impairment of the left leg, for which he previously received a schedule award.

On appeal appellant contends that he is entitled to 40 percent permanent impairment. He notes that, according to his physician, his surgery was a success as he can walk with no pain although he cannot do anything else due to his physical limitations.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on May 5, 2012 appellant, then a 57-year-old city carrier, sustained a sprain of other specified sites of the left knee and leg (gastroc strain), tear of the medial meniscus of the left knee, and localized unspecified osteoarthritis of the left lower leg when he turned around to leave the parcel room from which he had retrieved a gurney. Appellant stopped work on May 7, 2012. On November 7, 2012 he underwent authorized left knee arthroscopy to repair his medial and lateral meniscus tears. Appellant later underwent authorized total left knee arthroplasty performed on June 10, 2014 by Dr. Jason Norcross, an attending Board-certified orthopedic surgeon, to treat his advanced left knee osteoarthritis. He returned to full-time, full-duty work as a city carrier on October 6, 2014. By letter dated November 12, 2014, OWCP informed appellant that, as his actual wages as city carrier met or exceeded the wages of the position held when injured, his wage-loss compensation payments would be terminated, effective October 6, 2014. It noted that this decision did not affect coverage of his medical benefits.

On June 10, 2016 appellant filed a claim for a schedule award (Form CA-7).

In a June 10, 2016 medical report, Dr. Norcross noted that appellant presented for a follow up of his total left knee arthroscopy. Appellant related that his preoperative pain had been relieved and his quality of life had improved, yet he noticed limitations with kneeling and stairs. He also related that on occasion his knee felt unstable. Appellant noticed pain while using the brakes in a vehicle. Dr. Norcross provided findings on physical and x-ray examination of the left lower extremity. He found appellant status post June 10, 2014 left total knee arthroscopy and determined that appellant had 40 percent permanent impairment due to his left knee arthroscopy.

By letter dated June 23, 2016, OWCP advised appellant of the deficiencies of his claim and requested a medical report from his physician basing any permanent impairment determination on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (hereinafter A.M.A., *Guides*) and establishing the date that he had reached maximum medical improvement (MMI). Appellant was afforded 30 days to submit the requested information. He did not respond.

On February 16, 2017 an OWCP district medical adviser (DMA) reviewed a statement of accepted facts and the medical record, including Dr. Norcross's June 10, 2016 report. He determined that appellant had 21 percent permanent impairment of the left leg under the sixth edition of A.M.A., *Guides* and had reached MMI on June 10, 2016, the date of Dr. Norcross' evaluation. The DMA noted that he was not sure what class Dr. Norcross chose and what nonkey modifiers were assigned. In addition, he related that he was not sure whether Dr. Norcross used the sixth edition of A.M.A., *Guides*. The DMA used the accepted diagnosis of local unspecified osteoarthritis of the left leg to rate appellant's permanent impairment. Utilizing Table 16-3, Knee Regional Grid - Lower Extremity Impairments, page 511, he determined that appellant had a class 2 impairment for total knee arthroplasty with a default value of 25 for a good result (good position, stable, functional). The DMA assigned a grade modifier 1 for functional history (GMFH) under Table 16-6, page 516 based on no antalgic gait and limitation with kneeling and stairs. He reported a grade modifier 0 for physical examination (GMPE) under Table 16-7, page 517 based on full range of motion, stability, and no tenderness. The DMA advised that a grade modifier for clinical studies (GMCS) was not used as the knee x-ray

showed anatomic alignment of total knee prosthesis. He then used the net adjustment formula and calculated a net adjustment of -3, which, under Table 16-3, moved the default grade two spots to the left to grade A for 21 percent permanent impairment of the left lower extremity.

By letter dated February 23, 2017, OWCP provided Dr. Norcross a copy of the DMA's February 16, 2017 report and requested that he provide comments on the DMA's impairment rating.

In a February 10, 2017 letter, received on February 23, 2017, Dr. Norcross indicated that appellant had reached MMI on June 10, 2016, the date of his evaluation. He reiterated his prior opinion that appellant had 40 percent permanent impairment of the left leg. Dr. Norcross maintained that appellant's left total knee replacement justified his impairment rating. He noted his objective finding of left knee ROM from 0 to 130 degrees, but noted that appellant still had minor pain and occasional instability. Dr. Norcross further noted his subjective complaint of pain while braking a vehicle. He indicated that appellant had a well-functioning total knee arthroplasty prosthesis with near normal range of motion, but concluded that a total knee arthroplasty qualified for 40 percent impairment based on section 2 of the North Carolina Industrial Commission Rating Guide.

By decision dated March 9, 2017, OWCP granted appellant a schedule award for 21 percent permanent impairment of the left leg. The date of MMI was noted as June 10, 2016. The award covered a period of 60.48 weeks, from June 10, 2016 to August 7, 2017. The award was based on the DMA's February 16, 2017 impairment rating.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and its implementing federal regulations[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions, and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[4] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[6] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[7] It

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[5] *Id.*

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[7] *Isidoro Rivera*, 12 ECAB 348 (1961).

is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments are to be included.[8]

The sixth edition of 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).[9] Under the sixth edition, the evaluator identifies the impairment class for the Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than 21 percent permanent impairment of the left leg. OWCP accepted appellant's claim for sprain of other specified sites of the left knee and leg (gastroc strain), tear of the medial meniscus of the left knee, and localized unspecified osteoarthritis of the left lower leg. It authorized left total knee arthroplasty performed on June 10, 2014 to treat the accepted left lower leg osteoarthritis condition. OWCP granted appellant a schedule award for 21 percent permanent impairment of his left leg.

The Board finds that the June 10, 2016 and February 23, 2017 opinions of Dr. Norcross, appellant's treating physician, that appellant had 40 percent permanent impairment of his left leg due to the authorized June 10, 2014 left total knee arthroplasty, are of diminished value. Dr. Norcross based his impairment rating on the North Carolina Industrial Commission Rating Guide. The Board finds that Dr. Norcross' report fails to address permanent impairment under the standards applicable to FECA. The Board has found that, when an attending physician fails to provide a rating that conforms to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment.[13] As such, the Board finds

[8] *See Dale B. Larson*, 41 ECAB 481, 490 (1990); *supra* note 6 at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.a.3 (January 2010). This portion of OWCP procedures provides that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

[9] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[10] *Id.* at 494-531.

[11] *Id.* at 521.

[12] *See* Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 2.808.6(f) (February 2013).

[13] *M.P.*, Docket No. 13-1225 (issued October 23, 2013); *Linda Beale*, 57 ECAB 429, 434 (2006). *See also James Kennedy, Jr.*, 40 ECAB 620, 627 (1989).

that Dr. Norcross' opinion is of limited probative value regarding appellant's left leg impairment under FECA.

OWCP's DMA reviewed Dr. Norcross' findings and noted that he was unable to determine the class of impairment and nonkey modifiers assigned by the physician. He was also uncertain as to whether Dr. Norcross had used the sixth edition of the A.M.A., *Guides*. The DMA chose to rate appellant's diagnosis-based impairment based on appellant's accepted localized unspecified osteoarthritis of the left leg condition. Based on Dr. Norcross' findings, he utilized Table 16-3, page 511 and found that appellant had a class 2 impairment for total knee arthroplasty with a default value of 25 percent impairment for a good result-good position, stable, functional. The DMA assessed a grade modifier 1 for GMFH under Table 16-6, page 516 because appellant had no antalgic gait and a limitation with kneeling and stairs. He assessed a grade modifier 0 for GMPE under Table 16-7, page 517 based on full ROM, stability, and no tenderness. The DMA advised that a grade modifier for GMCS was not applicable as the knee x-ray showed anatomic alignment of total knee prosthesis. He calculated a net adjustment of -3, which, under Table 16-3, moved the default grade two spots to the left to grade A for 21 percent permanent impairment of the left lower extremity.

OWCP may rely on the opinion of a DMA to apply the A.M.A., *Guides*.[14] The Board finds that the February 16, 2017 impairment rating from OWCP's DMA represents the weight of the medical evidence in this case as he properly applied the appropriate provisions of the A.M.A., *Guides* to the clinical findings of record.[15] Accordingly, as the record contains no other probative, rationalized medical opinion which indicates that appellant has greater impairment based on his accepted left knee conditions pursuant to the A.M.A., *Guides*, OWCP properly granted a schedule award for 21 percent left leg permanent impairment in its March 9, 2017 decision.

On appeal appellant contends that he is entitled to 40 percent permanent impairment. He notes that, according to his treating physician, his surgery was a success as he can walk with no pain although he cannot do anything else due to his physical limitations. As found, however, Dr. Norcross' opinion is of diminished probative value as he failed to utilize the sixth edition of the A.M.A., *Guides* to support an award greater than the 21 percent previously awarded.[16]

Appellant may request a schedule award or an increased schedule award at any time, based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

[14] *See D.E.*, Docket No. 16-0979 (issued October 6, 2016); *J.G.*, Docket No. 09-1714 (issued April 7, 2010).

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

[16] *Supra* note 13.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish more than 21 percent permanent impairment of the left leg, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2017 of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2017
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