United States Department of Labor
Employees' Compensation Appeals Board

R.V., Appellant	)	
and	)	**Docket No. 17-0731**
	)	**Issued: June 7, 2017**
DEPARTMENT OF THE ARMY, FORT BLISS TX, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 14, 2017 appellant filed a timely appeal from a December 20, 2016 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 met his burden of proof to establish more than 12 percent permanent impairment of the left lower extremity and one percent impairment of the right lower extremity for which he received a schedule award.

On appeal appellant contends that he is entitled to an additional 10 percent left lower extremity permanent impairment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 27, 2012 appellant, then a 47-year-old supervisory firefighter, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee when he was tripped during physical training. OWCP accepted left knee sprains of the lateral collateral, medial collateral, and cruciate ligaments, unspecified internal derangement of the left knee, and osteochondritis dissecans, left. Appellant received wage-loss compensation and was placed on the periodic rolls. He had left knee arthroscopic reconstruction on October 23, 2012.

Appellant returned to modified part-time work on January 23, 2013. On April 9, 2013 OWCP additionally accepted traumatic arthropathy of the left lower leg. Appellant began full-time modified duty on July 29, 2013. While participating in work hardening, he injured his back and groin. OWCP additionally accepted pain in pelvic region and thigh, sprain of pelvis, lumbar sprain, thoracic or lumbosacral neuritis or radiculitis, sciatica, and unspecified sprain of hip and thigh.

On July 29, 2014 appellant filed a claim for a schedule award (Form CA-7). He submitted a June 6, 2014 report in which Dr. Andrew Palafox, a Board-certified orthopedic surgeon, provided examination findings and advised that, in accordance with Table 16-3, Knee Regional Grid, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[2] appellant had a class 1 impairment. After applying modifiers for functional history and physical examination, he concluded that appellant had 12 percent left lower extremity due to his knee injury. Dr. Palafox also found that, in accordance with Table 16-4, Hip Regional Grid, appellant had an additional 1 percent impairment, for a total 13 percent permanent impairment, due to soft tissue injury to his right hip. He concluded that maximum medical improvement (MMI) had been reached on June 6, 2014. Dr. Ronald Blum, an OWCP medical adviser and Board-certified orthopedist, agreed with Dr. Palafox's analysis that appellant had 1 percent right lower extremity permanent impairment, and 12 percent left lower extremity permanent impairment.

In a February 5, 2015 decision, appellant was granted a schedule award for 1 percent right lower extremity permanent impairment and 12 percent left lower extremity permanent impairment.[3]

On January 19, 2016 appellant underwent an authorized lumbar discectomy at L3-4. He stopped work, received wage-loss compensation, and returned to full duty May 27, 2016.

On October 18, 2016 appellant filed an additional schedule award claim (Form CA-7). In an August 30, 2016 report, Dr. Michael Boone, a Board-certified physiatrist, noted the history of injury and described appellant's medical and surgical care and his complaints of left knee and right leg discomfort. He advised that, in accordance with the sixth edition of the A.M.A.,

[2] A.M.A., *Guides* (6th ed. 2009).

[3] Appellant began part-time work on June 4, 2015. He returned to full duty on July 10, 2015. By decision dated October 6, 2015, OWCP found appellant at fault for the creation of an overpayment of compensation of $2,580.86 that occurred because he continued to receive FECA compensation after he returned to full-time work.

Guides, appellant had a class 1 left lower extremity impairment for cruciate ligament injury, which had a default value of 10 percent.[4] He found modifiers of 1 for functional history, physical examination, and clinical studies. After applying the net adjustment formula, Dr. Boone concluded that appellant had a total of 10 percent left lower extremity permanent impairment. He also noted that the lumbar spine was not ratable under FECA and found that August 30, 2016 was the date of MMI.

In a report dated October 27, 2016, Dr. Arthur S. Harris, an OWCP medical adviser and Board-certified orthopedic surgeon, noted his review of the record including Dr. Boone's report. He advised that appellant had no additional right leg permanent impairment. Dr. Harris agreed with Dr. Boone's assessment that appellant had a total of 10 percent permanent impairment of the left leg. He noted that, as appellant had previously received a schedule award for 12 percent left lower extremity impairment, he was not entitled to an additional schedule award.

By decision dated December 20, 2016, OWCP found that appellant was not entitled to an additional schedule award because the medical evidence of record did not establish additional impairment.

LEGAL PRECEDENT

It is the claimant's burden of proof to establish that he sustained a permanent impairment of a scheduled member or function as a result of any employment injury.[5]

The schedule award provision of FECA[6] and its implementing federal regulations,[7] 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. 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[8] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[9]

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

[4] Although Dr. Boone did not specifically identify Table 16-3, Knee Regional Grid, it is clear from his analysis that he used this table.

[5] *See Tammy L. Meehan*, 53 ECAB 229 (2001).

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id*. at § 10.404(a).

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

and Health (ICF).[10] Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment class for the diagnosed condition is Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[13] Section 16.2a of the A.M.A., *Guides*, provides that if the class selected is defined by physical examination findings or clinical studies results, these same findings may not be used as grade modifiers to adjust the rating.[14]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's 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.[15] In determining entitlement to a schedule award, preexisting impairment to the scheduled member is to be included.[16]

ANALYSIS

The Board finds that appellant has failed to establish more than 12 percent permanent impairment of the left lower extremity and 1 percent permanent impairment of the right lower extremity. The sixth edition of the A.M.A., *Guides* classifies the lower extremity impairment by diagnosis, which is then adjusted by grade modifiers.[17] Section 16.2a includes instructions for performing an impairment analysis using the regional grids. This includes identifying a diagnosis and applying the grade modifiers.[18]

By decision dated February 5, 2015, OWCP awarded 1 percent permanent impairment of the right lower extremity and 12 percent permanent impairment of the left lower extremity.

On October 18, 2016 appellant filed an additional schedule award claim. Dr. Boone, in his August 30, 2016 report, noted the history of injury and described appellant's medical and surgical care and his complaints of left knee and right leg pain. He advised that, in accordance

[10] A.M.A., *Guides*, *supra* note 2 at 4, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

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

[12] *Id*. at 521.

[13] *Id*. at 23-28.

[14] *Id*. at 500.

[15] *See supra* note 9 at Chapter 2.808.6f (February 2013).

[16] *Peter C. Belkind*, 56 ECAB 580 (2005).

[17] A.M.A., *Guides*, *supra* note 2 at 497-500.

[18] *Id*. at 499-500.

with the sixth edition of the A.M.A., *Guides*, appellant had a class 1 left lower extremity impairment for cruciate ligament injury which had a default value of 10 percent. Dr. Boone found grade modifiers of 1 each for functional history, physical examination, and clinical studies. After applying the net adjustment formula, he concluded that had a total left lower extremity permanent impairment of 10 percent with August 30, 2016 the date of MMI. Dr. Boone found no additional right lower extremity permanent impairment.

In a report dated October 27, 2016, Dr. Harris, an OWCP medical adviser and Board-certified orthopedic surgeon, noted his review of the record including Dr. Boone's report. He advised that appellant had no additional right leg impairment. The medical adviser agreed with Dr. Boone's assessment that appellant had 10 percent impairment of the left leg.

The degree of functional impairment to a scheduled member is essentially a medical question that can only be established by probative medical opinion.[19] Dr. Boone applied the appropriate sections of the A.M.A., *Guides* to the clinical findings of record[20] and concluded that appellant had a total 10 percent left lower extremity permanent impairment. His opinion was supported by Dr. Harris, OWCP's medical adviser.

The Board finds that OWCP properly evaluated the permanent impairment consistent with the A.M.A., *Guides*. As appellant had previously received a schedule award for 12 percent left lower extremity impairment due to his knee condition, he was not entitled to an additional schedule award, based on Dr. Boone's finding of 10 percent left lower extremity impairment due to his knee condition, which is less than the 12 percent previously awarded. Therefore, the December 20, 2016 decision denying an additional schedule award was proper under the law and facts of this case.

Appellant may request a schedule award or 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.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish more than 12 percent permanent impairment of the left lower extremity and 1 percent permanent impairment of the right lower extremity.

[19] *L.G.*, Docket No. 09-1517 (issued March 3, 2010).

[20] *See W.M.*, Docket No. 11-1706 (issued March 20, 2012).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board