

**United States Department of Labor
Employees' Compensation Appeals Board**

G.S., Appellant)
and) Docket No. 18-0299
DEPARTMENT OF JUSTICE, BUREAU OF) Issued: June 12, 2018
PRISONS, Victorville, CA, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 22, 2017 appellant filed a timely appeal from an October 18, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 13 percent permanent impairment of the right lower extremity for which he previously received schedule awards.

FACTUAL HISTORY

On April 6, 2009 appellant, then a 33-year-old general education and training teacher, filed a traumatic injury claim (Form CA-1) alleging that, on March 6, 2009, he injured his right knee

¹ 5 U.S.C. § 8101 *et seq.*

and low back while in the performance of duty.² OWCP accepted the claim for lumbar sprain and a tear of the lateral meniscus of the right knee.

Appellant, on February 8, 2010, filed a claim for a schedule award (Form CA-7). He submitted a February 1, 2010 impairment evaluation from Dr. Rama T. Pathi, a Board-certified orthopedic surgeon. Dr. Pathi found that appellant had 2 percent permanent impairment of the right lower extremity and 16 percent whole person impairment due to lumbar pain. An OWCP medical adviser reviewed Dr. Pathi's report on February 27, 2010 and determined that appellant had 3 percent permanent impairment of the right lower extremity in addition to the 10 percent permanent impairment of the right lower extremity previously awarded under File No. xxxxxx462.

By decision dated June 8, 2010, OWCP granted appellant a schedule award for an additional 3 percent permanent impairment of the right lower extremity, for a total permanent right lower extremity impairment of 13 percent. The period of the award ran for 8.64 weeks from February 1 to April 2, 2010. OWCP noted that it had previously awarded appellant 10 percent permanent impairment of the right lower extremity under File No. xxxxxx462.

On June 21, 2010 appellant requested reconsideration. By decision dated September 10, 2010, OWCP denied his request for reconsideration as he had not submitted new evidence or raised an argument sufficient to warrant reopening his case for further review of the merits under 5 U.S.C. § 8128(a).

Appellant subsequently submitted a magnetic resonance imaging (MRI) scan of the right knee, obtained on February 10, 2017, which revealed a deformed lateral meniscus, moderate degenerative osteophytosis and mild-to-moderate chondromalacia of the lateral compartment, and mild patellofemoral chondromalacia. A February 10, 2017 MRI scan of the lumbosacral spine revealed mild lumbar spondylosis, moderate lumbar facet arthropathy contributing to neural foraminal narrowing, and mild discogenic changes.

Appellant later filed a claim for an increased schedule award on May 22, 2017.

By letter dated June 6, 2017, OWCP requested that appellant submit an impairment evaluation from his attending physician addressing the extent of any increased employment-related permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

In a June 9, 2017 response, appellant indicated that he had submitted MRI scan studies of his low back and right knee. He advised that he was unable to provide additional evidence and requested that OWCP refer him for a second opinion examination.

By decision dated October 18, 2017, OWCP denied appellant's claim for an increased schedule award. It found that he had not submitted evidence establishing more than the 13 percent permanent impairment of the right lower extremity previously awarded.

² OWCP assigned the claim File No. xxxxxx767.

³ A.M.A., *Guides* (6th ed. 2009).

LEGAL PRECEDENT

The schedule award provisions of FECA,⁴ and its implementing federal regulations,⁵ 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.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

A claimant has the burden of proof under FECA to establish a permanent impairment of a scheduled member or function of the body as a result of his or her employment injury, entitling him or her to a schedule award.⁸ A claimant also has the burden of proof to establish an increased schedule award.⁹

Before the A.M.A., *Guides* can be utilized, a description of impairment must be obtained from claimant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decrease in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁰

ANALYSIS

OWCP accepted that appellant sustained lumbar sprain and a tear of the lateral meniscus of the right knee due to a March 6, 2009 employment injury. On June 8, 2010 it granted him a schedule award for an additional 3 percent permanent impairment of the right lower extremity, noting that he had previously received an award for 10 percent right lower extremity impairment under OWCP File No. xxxxxx462.

On May 22, 2017 appellant filed another claim for an increased schedule award. He did not, however, provide an impairment evaluation or other medical evidence demonstrating

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ *See D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

⁹ *See D.F.*, Docket No. 17-1474 (issued January 26, 2018).

¹⁰ *D.M.*, Docket No. 11-0775 (issued October 11, 2011); *Peter C. Belkind*, 56 ECAB 580 (2005).

increased permanent impairment. Appellant submitted MRI scan studies of the lumbar spine and right knee. However, the MRI scan studies failed to address the relevant issue of whether he sustained a permanent impairment of a scheduled member or function.¹¹ As discussed, appellant has the burden of proof to submit medical evidence supporting that he has an increased impairment of a schedule member or function of the body.¹² The evaluation from the physician must include a description of the impairment in sufficient detail that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹³ Appellant failed to submit medical evidence sufficient to establish that he sustained an increased impairment of his right lower extremity causally related to his accepted employment injury. Thus, he has not met his burden of proof.¹⁴

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 has not established more than 13 percent permanent impairment of the right lower extremity for which he previously received schedule awards.

¹¹ See C.B., Docket No. 16-0060 (issued February 2, 2016).

¹² See *supra* note 7.

¹³ See B.V., Docket No. 17-0656 (issued March 13, 2018).

¹⁴ See P.L., Docket No. 13-1592 (issued January 7, 2014).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2018
Washington, DC

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

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

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