United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 22-1075**
	)	**Issued: April 10, 2023**
DEPARTMENT OF THE AIR FORCE, OHIO AIR NATIONAL GUARD, Columbus, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 13, 2022 appellant, through counsel, filed a timely appeal from a June 13, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

FACTUAL HISTORY

On August 22, 2016 appellant, then a 27-year-old engineering equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on August 22, 2016 he injured his left knee when running sprints while in the performance of duty. He explained that he planted his left foot to turn and his knee popped and gave out.

By decision dated March 24, 2017, OWCP accepted the claim for sprain of medial collateral ligament (MCL) of the left knee.

An April 24, 2017 magnetic resonance imaging (MRI) scan of the left knee demonstrated evidence of ACL graft reconstructive surgery and nonvisualization of the anterior cruciate ligament (ACL) graft suggestive of a tear.[3]

In an August 30, 2019 report, Dr. James D. Lyions, a Board-certified orthopedist, related that appellant had an ACL reconstruction approximately 10 years ago and sustained another ACL tear approximately three years ago, for which he was evaluated by Dr. Hoeflinger. Appellant could not take time off to undergo an ACL reconstruction. He reported multiple episodes of instability in his knee with increased work activity. Examination of the left knee revealed some laxity with Lachman's maneuver. Dr. Lyions diagnosed a left ACL tear and noted that appellant would benefit from ACL reconstruction.

In an October 8, 2019 report, Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed appellant's medical records and noted that there was no evidence of an ACL injury after the knee swelling due to the August 22, 2016 employment injury had "calmed down." He opined that the proposed left knee ACL revision with patellar tendon allograft was not causally related to the accepted MCL injury and, thus, was not medically necessary on a work-related basis.[4]

[3] Appellant left his federal employment on July 7, 2017.

[4] In an October 16, 2019 letter, Dr. Lyions asserted that appellant did have an ACL tear at the time of the August 22, 2016 injury but did not wish to pursue surgery at the time. He opined that appellant's current symptoms, including unpredictable episodes of knee stability, were directly related to "this injury that he sustained while in the military back in 2017." OWCP determined that a conflict in medical opinion existed between Dr. Fellars and Dr. Lyions and referred appellant to Dr. Robert Kalb, a Board-certified orthopedic surgeon, for an impartial medical examination. It requested that Dr. Kalb address appellant's current employment-related condition and whether the proposed left knee ACL surgery was medically necessary and causally related to the accepted employment injury. In a report dated February 28, 2020, Dr. Kalb diagnosed employment-related MCL injury and nonemployment-related ACL insufficiency of the left knee and partial tear of the medial and lateral menisci of the left knee. He opined, based on the statement of accepted facts (SOAF) provided by OWCP, that the proposed surgery was not causally related to the accepted MCL injury.

On December 24, 2019 appellant underwent an arthroscopic-assisted left ACL reconstruction surgery.

In a July 10, 2020 note, Dr. Lyions reported that appellant had reached maximum medical improvement (MMI) on June 24, 2020.

In an impairment evaluation dated October 29, 2020, Dr. Sami E. Moufawad, a Board-certified physiatrist, discussed appellant's history of an August 22, 2016 employment injury and subsequent December 24, 2019 ACL repair. He diagnosed sprain of MCL of left knee and ACL tear status post repair with mild residual instability. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[5] Dr. Moufawad identified the class of diagnosis (CDX) as a cruciate or collateral ligament injury with mild laxity using Table 16-3 on page 510, a Class 1, grade C impairment. After applying grade modifiers, he opined that appellant had 10 percent permanent impairment of the left lower extremity, which was unchanged from the original position of a Class 1, grade C impairment. Dr. Moufawad determined the date of MMI was October 29, 2020, the date of his examination.

On November 12, 2020 appellant, through counsel, requested a schedule award.

On December 9, 2021 Dr. Herbert White, Jr., a Board-certified occupational medicine specialist serving as a DMA, reviewed appellant's history of injury and treatment. Dr. White noted that appellant had a positive Lachman's test, indicating mild instability of the ACL, and negative varus and valgus tests, indicating no instability in the MCL. He concurred with Dr. Moufawad's finding of 10 percent permanent impairment of the left lower extremity. Dr. White noted, however, that this 10 percent impairment was solely due to appellant's ACL instability, not the accepted MCL sprain.

By decision dated January 5, 2022, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body due to his accepted work injury.

On January 13, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on March 30, 2022.

By decision dated June 13, 2022, OWCP's hearing representative affirmed the January 5, 2022 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA,[6] and its implementing federal regulations,[7] set forth the number of weeks of compensation payable to employees sustaining permanent

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

[6] *Supra* note 3.

[7] 20 C.F.R. § 10.404.

impairment from loss, or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter, which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.[8] 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.[9]

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[10] For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

In support of his claim for a schedule award, appellant submitted an October 29, 2020 impairment evaluation from Dr. Moufawad, who diagnosed sprain of MCL of the left knee and ACL tear status post repair with mild residual instability and found that he had 10 percent permanent impairment of the left lower extremity due to his cruciate or collateral ligament injury, pursuant to Table 16-3 on page 510 of the A.M.A., *Guides*. OWCP, however, did not authorize his ACL surgery as causally related to his August 22, 2016 employment injury. It only accepted appellant's claim only for sprain of MCL of the left knee.

OWCP properly referred the case record to Dr. White, the DMA. In a December 9, 2021 report, he reviewed appellant's history of injury and treatment. Dr. White noted that appellant had a positive Lachman's test, indicating mild instability of the ACL, and negative varus and valgus tests, indicating no instability in the MCL. He concurred with Dr. Moufawad's finding of 10 percent permanent impairment of the left lower extremity. Dr. White noted, however, that this 10 percent permanent impairment was solely due to appellant's ACL instability, not the accepted MCL sprain.

[8] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[9] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[10] *K.B.*, Docket No. 19-0431 (issued July 1, 2019); *Veronica Williams*, 56 ECAB 367 (2005).

[11] *F.E.*, Docket No. 17-0584 (issued December 18, 2017).

Dr. White properly applied the appropriate standards of the A.M.A., *Guides* in finding no impairment due to the accepted conditions. As the DMA's opinion is also detailed, well rationalized, and based on a proper factual background, the Board finds that it constitutes the weight of the medical evidence.

As the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body causally related to the accepted employment injury, the Board finds that appellant has not met his burden of proof.

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 permanent impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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