

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

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**L.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Clive, IA, Employer**

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**Docket No. 13-1456  
Issued: November 6, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 31, 2013 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) decision dated December 6, 2012. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 one percent impairment to his left leg.

**FACTUAL HISTORY**

Appellant, a 61-year old letter carrier, injured his left leg in April 2011 when he turned to catch a loose dog while delivering mail. He filed a claim for benefits on April 27, 2011, which OWCP accepted for rupture of the left quadriceps tendon.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

Appellant underwent x-ray testing on April 21, 2011 which showed a 13 millimeter, calcified loose body in the suprapatellar bursa. The sunrise view revealed lateral subluxation of the patella and narrowing of the lateral patellofemoral joint space with osteoarthritis.

On April 22, 2011 Dr. David A. Vittetoe, Board-certified in orthopedic surgery, performed arthroscopic surgery to repair appellant's ruptured left quadriceps tendon. The procedure was authorized by OWCP.

In an August 23, 2012 report, Dr. Vittetoe advised that appellant ambulated with a nonantalgic gait. On examination of the left leg, motor and sensory examinations are distally intact and appellant's foot was well perfused. Dr. Vittetoe noted a mild effusion of the left leg and stated that he had a range of motion of 0 degrees to 120 degrees. He has 00 extensor lag and his knee was stable to varus and valgus stress testing.

On September 24, 2012 appellant filed a claim for a schedule award based on a partial loss of use of his left leg.

In a report dated November 9, 2012, Dr. Daniel D. Zimmerman, an OWCP medical adviser, reviewed Dr. Vittetoe's August 23, 2012 report. He rated a one percent impairment of the left leg pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). Dr. Zimmerman stated that, under Table 16-3 at page 509 of the A.M.A., *Guides*,<sup>2</sup> Knee Regional Grid, Lower Extremity Impairments, the section pertaining to muscle/tendon impairments, appellant's ruptured quadriceps tendon yielded a Class 1 rating for strain, which had a default impairment of one to three percent, with a grade C default value of two percent left lower extremity impairment based on "palpatory findings and/or radiographic findings."<sup>3</sup> Utilizing Section 16.3a, the Adjustment Grid, Functional History at Table 16-6, page 516 of the A.M.A., *Guides*,<sup>4</sup> functional history adjustment for the lower extremities, Dr. Zimmerman determined that appellant had a functional history grade modifier of zero, noting that he had a nonantalgic gait and did not wear modified footwear. With regard to physical examination, he assigned a grade modifier of one based on the finding of mild effusion, pursuant to Table 16-7, Section 16.3b, page 517 of page 509 of the A.M.A., *Guides*. Dr. Zimmerman found no grade modifier for clinical studies pursuant to Section 16.3c and Table 16-8, page 519 of the A.M.A., *Guides*<sup>5</sup> as the x-ray changes were used to place the diagnostic criteria in Class 1.

Dr. Zimmerman applied the net adjustments from the functional history and physical examination grade modifiers of one at the net adjustment formula at page 521 of the A.M.A., *Guides*. He subtracted one from zero for minus one; and one from one which equaled zero, for an adjusted grade of 1. The medical adviser stated that a grade of minus one required that the B value of one percent be allowed a one percent impairment rating.<sup>6</sup>

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<sup>2</sup> A.M.A., *Guides* 509.

<sup>3</sup> *Id.* at 509.

<sup>4</sup> *Id.* at 516.

<sup>5</sup> *Id.* at 519.

<sup>6</sup> *Id.* at 521.

By decision dated December 6, 2012, OWCP granted appellant a schedule award for a one percent impairment of the left leg. The period of the award ran from August 23 to September 12, 2011, for a total of 2.88 weeks of compensation.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>7</sup> and its implementing regulations<sup>8</sup> 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 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.<sup>9</sup> 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.<sup>10</sup>

### **ANALYSIS**

OWCP accepted the condition of ruptured left quadriceps tendon. It granted appellant a schedule award for a one percent impairment of the left leg, relying on the rating from its medical adviser.

The Board notes that the A.M.A., *Guides* directs examiners to rate diagnosis-based impairments for the lower extremities pursuant to Chapter 16, which states at page 497, Section 16.2a that impairments are defined by class and grade.<sup>11</sup> The examiner is instructed to utilize the net adjustment formula outlined at pages 521-22 of the A.M.A., *Guides*,<sup>12</sup> to obtain the proper impairment rating. In a November 9, 2012 report, Dr. Zimmerman reviewed the August 23, 2012 report of Dr. Vittetoe, appellant's attending physician and the surgeon who performed surgery on April 22, 2011 to repair the ruptured left quadriceps tendon.<sup>13</sup> He found that appellant had a one percent impairment of the left leg based on the Knee Regional Grid, Lower Extremity Impairments at Table 16-3, page 509 of the A.M.A., *Guides*. Dr. Zimmerman applied the section on muscle/tendon impairments and found that appellant had a Class 1 rating for a

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<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>9</sup> *Id.*

<sup>10</sup> *Veronica Williams*, 56 ECAB 367, 370 (2005).

<sup>11</sup> A.M.A., *Guides* 497.

<sup>12</sup> *Id.* at 521-22.

<sup>13</sup> The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which 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. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005) (the Board notes that Dr. Beebe provided differing impairment ratings in several reports, which further diminished the probative weight of his opinion).

ruptured left quadriceps tendon, a default score of one percent lower extremity impairment based on palpatory findings and/or radiographic findings, for a grade C default value of two percent left lower extremity impairment. He then utilized the net adjustment formula, applying the grade modifiers of one for functional history and physical examination and no grade modifier for clinical studies. Dr. Zimmerman applied the net adjustments to rate the diagnosis as Class 1 of minus one for a grade B, equal to one percent lower extremity impairment.

The Board notes that Dr. Zimmerman calculated the impairment rating based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. He initially applied a grade C rating of two percent and, based on the net adjustment formula of -1, concluded that appellant was grade B. Table 16-3 at page 509, provides a lower extremity impairment rating of two percent, rather than one percent, for grade B. The Board therefore finds that appellant has two percent impairment of the left lower extremity.

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 has two percent permanent impairment of his left leg.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 6, 2012 decision of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: November 6, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board