United States Department of Labor
Employees' Compensation Appeals Board

ANTHONY F. OWENS, Appellant	)	
and	)	**Docket No. 04-2167**
	)	**Issued: February 3, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Mount Prospect, IL, Employer	)	

Appearances:
James R. Linehan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 2, 2004 appellant filed a timely appeal from the August 23, 2004 merit decision of the Office of Workers' Compensation Programs, which found that he had a two percent permanent impairment of the left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this schedule award.

ISSUE

The issue is whether appellant has more than a two percent permanent impairment of the left lower extremity.

FACTUAL HISTORY

On November 27, 2002 appellant, then a 41-year-old letter carrier, sustained an injury in the performance of duty when his left knee "gave out." The Office accepted his claim for the condition of torn medial meniscus, left knee and authorized surgery. On December 31, 2002 he underwent a partial medial meniscectomy and a debridement of a lesion just to the medial aspect of the trochlea in the patellofemoral compartment of the knee.

On June 16, 2003 appellant filed a claim for a schedule award. On April 22, 2004 Dr. John W. Ellis, a Board-certified family practitioner, reported that appellant reached maximum medical improvement on March 10, 2003. After examining appellant he determined that appellant had a two percent impairment of the left lower extremity due to a partial medial meniscectomy and a seven percent impairment due to mild laxity of the lateral collateral ligament, for a total impairment of nine percent.

On May 24, 2004 an Office medical adviser reviewed the medical evidence and determined that appellant had a two percent impairment of the left lower extremity due to a partial medial meniscectomy. He gave no rating for ligament laxity: "There was tenderness over the lateral joint line. There was mild laxity in the lateral collateral ligament. However, as the patient did not sustain a varus knee injury at the time of the [work-related injury], it is assumed this is preexisting, and no [permanent partial impairment] is awarded."

On August 23, 2004 the Office issued a schedule award for a two percent permanent impairment of the left lower extremity.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[1] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[2]

ANALYSIS

According to Table 17-33, page 546, of the A.M.A., *Guides*, a partial medial meniscectomy represents a two percent permanent impairment of the lower extremity. The Office issued a schedule award for this impairment and appellant does not disagree with this aspect of the decision. Appellant argues that he is entitled to an additional seven percent for the mild laxity found in his lateral collateral ligament.

The Office medical adviser reported that "as the patient did not sustain a varus knee injury at the time of the [work-related injury], it is assumed this is preexisting, and no [permanent partial impairment] is awarded." The role of the Office medical adviser is to act as a consultant in reviewing cases under the Act. A claims examiner uses the services of the medical adviser to adjudicate the issues of causal relationship, extent of disability, degree of permanent impairment and suitability of work. The Office medical adviser's role is not to act in an adjudicatory capacity or address legal issues in the case, and the Office should carefully observe

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

the distinction between medical questions, which are appropriate and adjudicatory questions, which are not.[3]

The medical adviser erred when he exercised his legal judgment about what is and is not covered under the Act. In doing so, he exceeded his role as a medical adviser. Further, he misstated the law. It is well established that preexisting impairments are to be included in the amount of a schedule award.[4] The Office's procedure manual reinforces the point: "The percentage should include those conditions accepted by [the Office] as job related and any preexisting permanent impairment of the same member or function."[5]

The Board finds that appellant is entitled to a schedule award for any preexisting laxity in his left lateral collateral ligament. Dr. Ellis found the laxity to be mild, and according to Table 17-33, page 546, of the A.M.A., *Guides*, mild laxity of a collateral ligament represents a seven percent permanent impairment of the lower extremity. Therefore, based on the findings reported by Dr. Ellis, appellant has a two percent impairment for his partial medial meniscectomy and a seven percent impairment for the mild laxity in his lateral collateral ligament, for a total permanent impairment of nine percent of the left lower extremity.

CONCLUSION

Appellant is entitled to compensation for an additional seven percent impairment of his left lower extremity. The Board will set aside the Office's August 23, 2004 decision and remand the case for payment of appropriate compensation.

[3] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Functions of the Medical Unit*, Chapter 3.0200.4.b (October 1990), *citing Carlton L. Owens*, 36 ECAB 608, 617 (1985).

[4] *Raymond E. Gwynn*, 35 ECAB 247 (1983) and authorities cited therein at n.2.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards*, Chapter 2.0700.3.a(3) (October 1990).

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: February 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member