United States Department of Labor
Employees' Compensation Appeals Board

L.L., Appellant	)	
and	)	**Docket No. 07-93**
	)	**Issued: May 14, 2007**
DEPARTMENT OF THE AIR FORCE, DOVER AIR FORCE BASE, DE, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 12, 2006 appellant filed a timely appeal from a June 20, 2006 decision of the Office of Workers' Compensation Programs, denying his request for reconsideration and an April 10, 2006 decision adjudicating his schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has more than a 20 percent permanent impairment of the left lower extremity; and (2) whether the Office abused its discretion in denying his request for reconsideration.

FACTUAL HISTORY

On August 17, 1998 appellant, then a 60-year-old material handler/forklift operator, sustained a left hip contusion and a torn meniscus of the left knee in the performance of duty after he fell stepping from a vehicle and slipping in grease. On June 10, 1999 appellant underwent arthroscopic surgery, including a left medial and lateral meniscectomy and chondroplasty of the left medial femoral condyle performed by Dr. Steven E. Tooze, an attending orthopedic surgeon. On April 18, 2000 appellant filed a claim for a schedule award.

On October 16, 2000 Dr. Tooze stated that appellant's left knee was doing fairly well. There was no catching, giving way or snapping. However, there was tightness and aching, especially with weather changes and intermittent swelling. There was approximately three to five centimeters of joint effusion. There was no excessive warmth, erythema or reproducible tenderness. There was full range of motion of the left knee in extension and 137 degrees of flexion. Dr. Tooze indicated that appellant would need a total knee replacement at some time in the future.

On May 9, 2000 a district medical adviser stated that, based on the physical findings of Dr. Tooze, appellant had a 17 percent impairment of the left leg, including 10 percent for a medial and lateral partial meniscectomy and 7 percent for mild cruciate ligament laxity, according to Table 64 at page 85 of the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. There was no impairment based on loss of range of motion.

By decision dated June 21, 2000, the Office granted appellant a schedule award for 48.96 weeks, for the period March 16, 2000 to February 21, 2001, based on a 17 percent impairment of the left leg.[1]

On August 27, 2004 Dr. Tooze stated that appellant had a 20 percent impairment based on the fifth edition of the A.M.A., *Guides.*[2] He did not explain how he made his impairment rating or reference specific portions of the A.M.A., *Guides.*

A district medical adviser found that appellant had an additional three percent impairment of the left knee based on the physical findings of Dr. Tooze. He indicated that there was additional impairment based on worsening of appellant's osteoarthritis, according to Table 17-31 at page 544 of the fifth edition of the A.M.A., *Guides.* The district medical adviser indicated that a zero millimeter cartilage interval represented a 20 percent impairment of the left knee.[3] He

[1] The Federal Employees' Compensation Act provides for 288 weeks of compensation for 100 percent loss or loss of use of a lower extremity. 5 U.S.C. § 8107(c)(2). Multiplying 288 weeks by 17 percent equals 48.96 weeks of compensation.

[2] A.M.A., *Guides* (5th ed. 2001).

[3] It appears that the district medical adviser did not understand that Table 17-31 at page 544 provides for a 20 percent impairment of the *whole person* for a 0 millimeter cartilage interval. Table 17-31 provides for a 50 percent impairment of the lower extremity for a 0 millimeter interval.

recommended an additional schedule award of 3 percent as appellant had previously been rated with a 17 percent impairment.

On November 26, 2004 the Office granted appellant a schedule award for 8.64 weeks for the period August 27 to October 26, 2004 based on an additional three percent impairment of the left lower extremity.

Appellant advised the Office that the additional schedule award did not adequately reflect the extent of his permanent impairment.

The Office referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for a second opinion evaluation of his left lower extremity impairment.

On April 4, 2006 Dr. Smith provided a history of appellant's condition and findings on physical examination. He stated that appellant's left knee had mild varus deformity. Appellant was experiencing pain in his left knee. There was no instability or atrophy and normal strength. Range of motion was normal for extension but appellant had only 100 degrees of flexion. The 2005 x-rays provided by appellant revealed cartilage joint space narrowing to three millimeters. Dr. Smith found that appellant had a 19 percent impairment of the left lower extremity, including 2 percent for a partial medial or lateral meniscectomy, according to Table 17-33 at page 546 of the A.M.A., *Guides,* 10 percent loss of flexion of 100 degrees, according to Table 17-10 at page 537 and 7 percent for narrowing of the knee cartilage joint space to 3 millimeters due to postmeniscectomy arthritis, according to Table 17-31 at page 544.

By decision dated April 10, 2006, the Office found that appellant had no more than the 20 percent impairment of his left lower extremity, for which he had received a schedule award.

On April 20, 2006 appellant requested reconsideration and indicated that his left knee conditions had become worse. He stated that he was not able to stand for long periods of time and his knee locked in place when he walked. Appellant indicated that he would need a knee replacement at some time in the future. He stated that x-rays used by Dr. Smith were not current and did not accurately reflect his knee condition.

On July 20, 2006 the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Act[4] and its implementing regulation[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, the Act 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

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides*[6] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

ANALYSIS -- ISSUE 1

Dr. Smith stated that appellant's left knee had mild varus deformity. Appellant was experiencing pain in his left knee. There was no instability or atrophy and normal strength. Range of motion was normal for extension but appellant had only 100 degrees of flexion. The 2005 x-rays provided by appellant revealed cartilage joint space narrowing to three millimeters. Dr. Smith found that appellant had a 19 percent impairment of the left lower extremity, including 2 percent for a partial medial or lateral meniscectomy, according to Table 17-33 at page 546 of the A.M.A., *Guides*, 10 percent for flexion of 100 degrees, according to Table 17-10 at page 537, and 7 percent for narrowing of the knee cartilage joint space to three millimeters due to postmeniscectomy arthritis, according to Table 17-31 at page 544.

Dr. Smith did not correctly apply the A.M.A., *Guides* regarding appellant's meniscectomy and decreased range of motion. He found a two percent impairment for a medial or lateral meniscectomy. However, appellant's meniscectomy was both medial and lateral as noted in the June 10, 1999 operative report. Therefore, he has a 10 percent impairment for a partial medial and lateral meniscectomy, according to Table 17-33 at page 546 of the A.M.A., *Guides*. Regarding range of motion, Dr. Smith correctly found that appellant had a 10 percent impairment for 100 degrees of flexion, according to Table 17-10 at page 537. However, he indicated that appellant had mild varus deformity. A mild varus deformity equates to a 10 percent impairment, according to Table 17-10. Dr. Smith also indicated that appellant had left knee pain but he did not indicate whether appellant had any impairment based on a peripheral nerve injury (pain/sensory deficit) which is addressed in section 17.2l of the A.M.A., *Guides* at pages 550 to 552. The cross-usage chart Table 17-2 at page 526 of the A.M.A., *Guides* permits the following combinations which are relevant to appellant's schedule award claim: arthritis impairment can be combined with diagnosis based impairment and peripheral nerve injury (pain). Range of motion impairment can be combined with peripheral nerve injury but not with arthritis impairment or diagnosis-based impairment. The Office attempted development of the medical evidence by referring appellant to Dr. Smith for examination and an opinion of permanent impairment. On remand, the Office should further develop the medical evidence by referring appellant back to Dr. Smith or another appropriate specialist for a comprehensive evaluation of his impairment due to his left knee conditions. The physician should determine appellant's impairment with reference to the cross-usage chart at Table 17-2.

CONCLUSION

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required. In light of the resolution of the first issue, the second issue is moot.

[6] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 20 and April 10, 2006 are set aside and the case is remanded for action consistent with this decision.

Issued: May 14, 2007
Washington, DC

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

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

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