United States Department of Labor
Employees' Compensation Appeals Board

F.L., Appellant	)	
and	)	**Docket No. 09-190**
	)	**Issued: August 3, 2009**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Chicago, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 27, 2008 appellant, through counsel, filed a timely appeal from the March 26 and September 30, 2008 schedule award decisions of the Office of Workers' Compensation Programs which found a 10 percent impairment of his left lower extremity. Pursuant to 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 10 percent impairment to his left lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On July 14, 2006 appellant, then a 46-year-old building maintenance employee, sustained injury when he fell on a wet ramp at work and ruptured a left leg tendon. On September 29, 2006 the Office accepted his claim for complete tear of the left quadriceps and he underwent surgical repair. On August 23, 2006 Dr. Boone Brackett, a Board-certified orthopedic surgeon

and treating physician, performed a resection of intervening scar and repair of quadriceps tendon, left knee. On October 2, 2006 the Office accepted a rupture of the left quadriceps tendon.

On February 27, 2007 appellant filed a claim for a schedule award.

In an opinion dated March 6, 2007, Dr. Jeffrey E. Coe, a physician Board-certified in occupational medicine, advised that appellant sustained 29 percent impairment to his left leg pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.) (A.M.A., *Guides*). He rated impairment on a 5 percent loss due to left thigh atrophy,[1] 12 percent loss due to 4/5 weakness of the left knee in flexion,[2] and 12 percent loss due to 4/5 weakness of the left knee in extension.[3]

In a medical report dated April 23, 2007, Dr. Brackett noted that appellant had a mid patellar circumference of 16¾ inches in the left knee versus 16 on the right. He noted that the comparable measurements of the thigh on the left measured 19¾ inches as it did on the right. Appellant stated that when he sat for long periods of time he became stiff in the joint and preferred to sit with his knees straight out. Dr. Bracket noted that these physical findings allowed for a five percent loss of the joint under the A.M.A., *Guides*.

The Office referred appellant's medical record to an Office medical adviser for an opinion on the degree of any employment-related impairment. In a May 21, 2007 report, the Office medical adviser noted that appellant did well following his left knee surgery but had "subjective complaints of pain at the superior border of his patella exacerbated by prolonged standing, walking, or by ascending or descending stairs." Appellant's left knee range of motion was from 0 to 120 degrees and there was no medial or lateral instability. The Office medical adviser noted one inch of thigh atrophy on the left as compared to the right which represented 10 percent left lower extremity impairment under the A.M.A., *Guides*.[4]

In a decision dated July 31, 2007, the Office issued a schedule award for a 10 percent impairment of the left lower extremity.

By letter dated August 4, 2007, appellant, through his attorney, requested a telephonic hearing.

In an October 23, 2007 medical report, Dr. Coe reviewed the schedule award and noted that it was based only on left thigh atrophy. He stated that appellant also had significant weakness of his left quadriceps muscle. Dr. Coe opined that appellant's injury-related weakness in his left leg was a factor in his current impairment and should be considered in any impairment rating. He stated that the inclusion of left leg weakness represented significantly greater than 10 percent impairment.

[1] A.M.A., *Guides* 530, Table 17-6a.

[2] *Id.* at 532, Table 17-8.

[3] *Id.*

[4] *Id.* at 530, Table 17-6a. The Board notes that one inch is approximately 2.5 centimeters.

At the hearing held on November 13, 2007, appellant's attorney contended that appellant had greater impairment based on weakness and loss of flexion and extension.

By decision dated January 25, 2008, the hearing representative remanded the case for further development of the medical evidence. The hearing representative stated that, if the Office medical adviser did not find that any impairment rating should be given for weakness or loss of motion, he should provide a rationalized medical explanation to support this conclusion.

In a February 4, 2008 report, the Office medical adviser noted that appellant was issued a schedule award for a 10 percent impairment of the left lower extremity based on one inch of thigh atrophy on the left side as compared to the right. He noted that neither appellant's operating surgeon nor any physical therapist had described any weakness with knee flexion. However, the Office medical adviser noted some loss of knee extension strength. He noted that the A.M.A., *Guides* provide that, if more than one method of determining permanent partial impairment can be used, the method that provides the higher rating should be adopted.[5] The Office medical adviser noted that Dr. Coe described resisted knee extension at 4/5 on the left which, under the A.M.A., *Guides*, represented 9¼ percent impairment in the distribution of the femoral nerve.[6] However, these two methods for rating impairment could not be combined under the cross-usage chart at Table 17-2. The Office medical adviser found that the higher rating of 10 percent impairment to the left lower extremity based on atrophy should be adopted.

In a decision dated March 26, 2008, the Office found that appellant did not have more than 10 percent impairment of the left lower extremity.

On May 30, 2008 appellant, through his attorney, requested a telephonic hearing. At the hearing held on July 14, 2008, appellant's attorney argued that Dr. Coe's 29 percent impairment rating was in accordance with the A.M.A., *Guides* and was more reliable than the opinion of the Office medical adviser.

By decision dated September 30, 2008, the hearing representative found that appellant had 10 percent impairment to his left lower extremity. The hearing representative gave weight to the opinion of the Office medical adviser finding that he correlated his ratings with the A.M.A., *Guides*.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[7] Neither the Act nor the regulations specify the manner in which the percentage of

[5] *Id.* at 527.

[6] *Id.* at 552, Table 17-37; 484, Table 16-11.

[7] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid additional members of the body are found at 20 C.F.R. § 10.404(a).

impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[8]

ANALYSIS

The Office accepted that appellant sustained a rupture of the left quadriceps tendon and on August 23, 2006 he underwent surgery to treat this condition. On March 6, 2007 Dr. Coe stated that pursuant to the A.M.A., *Guides* appellant had 29 percent impairment to his left leg. He based this rating on 5 percent loss due to left thigh atrophy, a 12 percent loss due to 4/5 weakness of the left knee in flexion and a 12 percent loss due to 4/5 weakness of the left knee in extension. Dr. Brackett found that appellant had a five percent impairment but did not reference any specific tables of the A.M.A., *Guides* in reaching his conclusion. The Office medical adviser referred to Table 17-6a of the A.M.A., *Guides,* and found that appellant had a 10 percent impairment to the left lower extremity based on one inch of atrophy.

On October 23, 2007 Dr. Coe questioned the rating by the Office medical adviser as he only considered atrophy. He noted that appellant also had significant weakness of his left quadriceps muscles. Dr. Coe opined that appellant's left leg weakness caused greater impairment. The Office remanded the case for the Office medical adviser to address whether any impairment rating could be given for weakness. On February 4, 2008 the Office medical adviser properly noted that the A.M.A., *Guides* advises practitioners to avoid combining methods that rate the same condition. The A.M.A., *Guides* provide that, if more than one method can be used, the method that provides the higher rating should be adopted.[9] The cross-usage chart at Table 17-2 provides further that atrophy ratings may not be combined with any of the other methods for rating impairment of diminished muscle function (gait derangement, muscle weakness and peripheral nerve injury.)[10] The Office medical adviser discussed Dr. Coe's findings on knee extension of 4/5 on the left and noted that appellant would be entitled to 9¼ percent impairment for Grade 4/5 strength in the distribution of the femoral nerve.[11] As this rating was lower than the 10 percent allowed for atrophy, the Office medical adviser properly determined that appellant did not have greater impairment than that previously awarded. The Board finds that the report of the Office medical adviser conforms to the A.M.A., *Guides* and constitutes the weight of the medical evidence.[12] Accordingly, appellant has not shown that he is entitled to an award of greater than 10 percent impairment of the left lower extremity. Dr. Coe did not address the cross-usage chart at Table 17-2 in rating impairment to appellant's left leg.

[8] *A. George Lampo*, 45 ECAB 441 (1994).

[9] A.M.A., *Guides* 527.

[10] *Id*. at 530, paragraph 17.2d.

[11] The Office medical adviser multiplied the maximum percent allowed for a Grade 4 muscle function pursuant to the A.M.A., *Guides* 484, Table 16-11, by the maximum impairment for impairment due to femoral nerve deficits (37 percent) to arrive at a 9.25 percent impairment.

[12] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

CONCLUSION

The Board finds that appellant has 10 percent impairment to his left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 30 and March 26, 2008 are affirmed.

Issued: August 3, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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