

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

R.V., Appellant)	
)	
and)	
)	Docket No. 10-1827
)	Issued: April 1, 2011
U.S. POSTAL SERVICE, MLS PROCESSING & DISTRIBUTION CENTER, San Diego, CA, Employer)	
)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 1, 2010 appellant filed a timely appeal from a February 18, 2010 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ 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 met his burden of proof to establish more than 33 percent impairment of the left lower extremity for which he received schedule awards. On appeal he asserts that he has continued pain and stiffness.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 10, 2000 appellant, then a 61-year-old postal clerk, filed an occupational disease claim, alleging that employment factors caused a left knee injury. He underwent left knee arthroscopic surgery on April 19, 2000. On June 20, 2000 the Office accepted aggravation of left knee arthritis. By decision dated September 28, 2000, appellant was granted a schedule award for 6 percent impairment of the left leg and following remand by an Office hearing representative, on July 30, 2001 was granted a schedule award for an additional 27 percent, for a total 33 percent left lower extremity impairment.

In April 2008, appellant began treatment with Dr. Jonathan Nissanoff, Board-certified in orthopedic surgery, who performed the total left knee replacement (TKR) on August 8, 2008. He received wage-loss compensation and on November 11, 2008 Dr. Nissanoff advised that he could return to modified duty. Appellant accepted a limited-duty job offer on November 12, 2008. However, he did not return to work, stating that he was using remaining sick leave for a nonemployment-related back condition and was then going to retire. Appellant's wage-loss compensation was terminated effective November 13, 2008.

On January 20, 2009 appellant filed a schedule award claim, and submitted a March 24, 2009 functional capacity evaluation, in which Dr. George de Leon, a chiropractor, assessed appellant's work capabilities. Dr. de Leon advised that, under Table 17-7 and Table 17-8 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),² appellant had 5 percent whole person or 12 percent lower extremity impairment due to muscle weakness, and under Table 17-10, 4 percent whole person or 10 percent lower extremity impairment due to loss of left knee flexion.³ In a June 10, 2009 report, Dr. Jason Groomer, an osteopath, described appellant's employment and medical history. He noted appellant's complaints of left knee and low back pain and provided physical examination findings. Dr. Groomer diagnosed degenerative joint disease of the left knee, status post TKR and advised that appellant was at maximum medical improvement. He stated that he agreed with Dr. de Leon's impairment rating. On August 4, 2009 Dr. Nissanoff advised that he adopted Dr. de Leon's findings and that he agreed with Dr. Groomer's June 10, 2009 conclusions.

By letter dated November 5, 2009, the Office informed appellant that, effective May 1, 2009, all permanent impairment determinations were to be completed in accordance with the sixth edition of the A.M.A., *Guides*,⁴ and asked that he submit a medical report in accordance with the sixth edition. In the same letter, it asked that Dr. Nissanoff and Dr. Groomer provide an impairment evaluation in accordance with the sixth edition.

In a November 17, 2009 report, Dr. Nissanoff provided left knee physical examination findings. He stated that there was no left knee atrophy, effusion, crepitus, medial or lateral joint

² A.M.A., *Guides* (5th ed. 2001).

³ Dr. de Leon also provided an impairment rating for appellant's lumbar spine. The Office has not accepted a lumbar spine condition as employment related.

⁴ A.M.A., *Guides* (6th ed. 2008).

line or patellofemoral facet tenderness. Apprehension, varus/valgus laxity, McMurray, Lachman and pivot shift testing was negative. Dr. Nissanoff reported that left and right knee flexion was normal at 135 degrees and left and right knee extension was normal at 0 degrees. He diagnosed degenerative joint disease of the left knee, status post left total knee arthroplasty. Dr. Nissanoff advised that appellant was permanent and stationary, and that he based his rating on the sixth edition of the A.M.A., *Guides*. However, he referenced Table 17-7, Table 17-8 and Table 17-11 of the fifth edition, and his impairment rating was as that by Dr. de Leon in his March 24, 2009 report. Dr. Nissanoff concluded that appellant had nine percent whole person impairment for his left knee condition.

In a January 22, 2010 report, Dr. Leonard A. Simpson, an orthopedic surgeon and Office medical adviser, reviewed the medical record, including the physical examination findings of Dr. Nissanoff's November 17, 2009 report. He stated that Table 16-3, Knee Regional Grid, of the sixth edition was appropriate for assessing appellant's work-related left knee osteoarthritis with TKR. Dr. Simpson advised that appellant had a default rating of Class 2 or 25 percent (good result, good position, stable and functional). He then used the adjustment grids and found that appellant had a Grade Modifier 2 for functional history, or a -1 net; a Grade Modifier 0 for physical examination, or a -2 net; and found no adjustment for clinical studies, stating that this was not applicable as maximum medical improvement had been reached. Dr. Simpson then concluded that appellant had a Category A, Class 2 impairment for a 21 percent left lower extremity impairment due to the accepted left knee osteoarthritis.

By decision dated February 18, 2010, the Office denied appellant's schedule award claim on the grounds that the medical evidence did not establish that he had an impairment greater than the 33 percent previously awarded.

LEGAL PRECEDENT

The schedule award provision of the Act,⁵ and its implementing federal regulations,⁶ 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸ For decisions issued after May 1, 2009, the sixth edition will be used.⁹

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁹ FECA Bulletin No. 09-03 (issued March 15, 2009).

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).¹⁰ Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).¹¹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹² Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹³

Whole person impairment ratings are not allowed under the Act as section 8107 provides a compensation schedule in terms of specific members of the body.¹⁴ Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.¹⁵

ANALYSIS

Appellant has previously received schedule awards totaling 33 percent left lower extremity impairment. The Board finds that he has not established that he is entitled to an additional schedule award. It is well established that, when the examining physician does not provide an estimate of impairment conforming to the proper edition of the A.M.A., *Guides*, the Office may rely on the impairment rating provided by a medical adviser.¹⁶ In this case, while Dr. Nissanoff advised that his November 17, 2009 impairment analysis was based on the sixth edition of the A.M.A., *Guides*,¹⁷ a review of his report shows that he referenced tables found in the fifth, rather than the sixth edition. The Office therefore properly referred the medical record to Dr. Simpson, an Office medical adviser, for review.¹⁸

¹⁰ A.M.A., *Guides*, *supra* note 4 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

¹¹ *Id.* at 494-531.

¹² *Id.* at 521.

¹³ *Id.* at 23-28.

¹⁴ 5 U.S.C. § 8107; *Tommy R. Martin*, 56 ECAB 273 (2005).

¹⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹⁶ See *J.Q.*, 59 ECAB 366 (2008).

¹⁷ *Supra* note 9.

¹⁸ *Supra* note 15.

As found by Dr. Simpson, the sixth edition of the A.M.A., *Guides* provides that a lower extremity impairment is to be classified by diagnosis, which is then adjusted by grade modifiers according to the formula described above.¹⁹ Appellant's accepted condition is aggravation of left knee arthritis, and he has undergone a TKR. Table 16-3 of the sixth edition of the A.M.A., *Guides*, Knee Regional Grid, provides that TKRs can be classified from Class 2 to Class 4, with Class 2 defined as a good result with good position, stable and functional. A finding under Class 2 yields impairments ranging from 21 to 25 percent.²⁰ Dr. Simpson extrapolated the physical findings provided by Dr. Nissanoff of normal knee range of motion and no left knee atrophy, effusion, crepitus, medial or lateral joint line or patellofemoral facet tenderness with negative apprehension, varus/valgus laxity, McMurray, Lachman, and pivot shift tests. He permissibly graded appellant's impairment as Class 1, for 25 percent impairment. Dr. Simpson then applied the grade modifiers described in Table 16-5 with analysis provided in Table 16-6 through Table 16-8 and the net adjustment formula²¹ and determined that appellant was not entitled to an additional impairment for clinical studies (GMCS). He found that appellant had a Grade Modifier 2 for functional history (GMFH), or a -1 net, and a Grade Modifier 0 for physical examination (GMPE), or a -2 net. Dr. Simpson then properly applied the net adjustment formula described in section 16.3d of the sixth edition of the A.M.A., *Guides*,²² and concluded that appellant had a 21 percent left lower extremity impairment.

As the record does not contain an additional medical report that rates appellant's left lower extremity impairment in accordance with the sixth edition of the A.M.A., *Guides*, appellant has not established entitlement to a greater award.²³

CONCLUSION

The Board finds that appellant has not established that he is entitled to a left lower extremity schedule award greater than the 33 percent previously awarded.

¹⁹ *Supra* note 9.

²⁰ A.M.A., *Guides*, *supra* note 4 at 511.

²¹ *Id.* at 515-21.

²² *Id.* at 518-22.

²³ Moreover, the Board notes that the 9 percent whole person impairment found by Dr. Nissanoff under the fifth edition of the A.M.A., *Guides* for appellant's left knee degenerative arthritis would merely yield 23 percent left lower extremity impairment. *See id.* at 530, Table 16-10.

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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