United States Department of Labor
Employees' Compensation Appeals Board

R.E., Appellant	)	
and	)	**Docket No. 10-2097**
	)	**Issued: June 2, 2011**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, Calexico, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On August 16, 2010 appellant filed a timely appeal from the August 12, 2010 merit decision of the Office of Workers' Compensation Programs, which denied modification of his schedule award. Pursuant to the Federal Employees' Compensation Act[1] 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 a 10 percent impairment of his right leg causally related to his December 1, 2006 employment injury or authorized surgery.

FACTUAL HISTORY

On December 1, 2006 appellant, a 41-year-old border patrol officer, injured his right knee in the performance of duty when, while inspecting a cargo trailer, he slipped and hit his knee. A

[1] 5 U.S.C. § 8101 *et seq.*

January 13, 2007 magnetic resonance imaging (MRI) scan showed findings consistent with a tear involving the posterior horn of the right medial meniscus. The Office accepted appellant's claim for a torn right medial meniscus and authorized right knee surgery. On April 3, 2007 appellant underwent partial medial and lateral meniscectomies and a shaving of the patella for chondromalacia.[2]

On July 1, 2009 Dr. Veerinder S. Anand, the attending orthopedic surgeon, found that appellant had reached maximum medical improvement. Using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[3] he determined that appellant had a 10 percent impairment of his right lower limb due to partial medial and lateral meniscectomies.

On January 30, 2010 an Office medical adviser reviewed appellant's file and, applying the sixth edition of the A.M.A., *Guides*, agreed that appellant had a 10 percent impairment of his right lower limb.

In a February 9, 2010 decision, the Office issued a schedule award for 10 percent impairment of appellant's right leg.

An MRI scan obtained on March 6, 2010 showed findings consistent with mucoid degeneration of the anterior cruciate ligament. It stated that blunting of the inner third of the medial meniscus might be due to a small radial tear or degenerative fraying. The MRI scan also noted an oblique tear (measuring approximately 2.5 millimeters) of the posterior horn of the medial meniscus extending to the articular surface.

Appellant requested reconsideration. He stated that he was informed he would need another right knee surgery. Appellant remained hopeful that the Office would reconsider the original decision and offer more compensation.

On June 7, 2010 Dr. Christopher C. Lai, appellant's orthopedic surgeon, described his findings on physical examination, which included a positive McMurray's medially, positive anterior drawer, positive Lachman's test, and range of motion from 0 to 120 degrees. He reviewed the March 6, 2010 repeat MRI scan and diagnosed a recurrent medial meniscus tear and an anterior cruciate tear in the right knee. X-rays obtained that date showed mild degenerative joint disease at the medial compartment and patellofemoral joint in the right knee.

In a decision dated August 12, 2010, the Office reviewed the merits of appellant's claim and denied modification of his schedule award. It found that none of the medical evidence submitted supported an increase in the percentage of impairment already awarded, as none of the evidence discussed impairment or provided greater impairment ratings.

[2] Findings included a tear of the middle third of the medial meniscus and a degenerative tear of the posterior third of the lateral meniscus.

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

On appeal, appellant argues that the March 6, 2010 MRI scan would have made a difference in his rating, but the Office failed to forward it to its medical adviser for further review.

LEGAL PRECEDENT

Section 8107 of the Act[4] 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 A.M.A., *Guides*.[5] For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition.[6]

ANALYSIS

Diagnosis-based impairment is the primary method of evaluation for the lower limb.[7] Table 16-3, page 509 of the A.M.A., *Guides* gives a default impairment rating of 10 percent when a claimant has medial and lateral partial tears or meniscectomies. The Office medical adviser reported that appellant had a 10 percent impairment of his right lower limb resulting from the December 1, 2006 employment injury.

There is more to the diagnosis-based impairment method than finding the default impairment value. The default value may be adjusted up or down by grade modifiers, including functional history, physical examination and relevant clinical findings, but only if those modifiers are determined to be reliable and associated with the diagnosis. This could result in an adjustment of two or three percentage points higher or lower than the default value. The Office medical adviser did not follow this procedure to determine appellant's final impairment rating.[8] Because the Office medical adviser did not properly apply the sixth edition of the A.M.A. *Guides* in recommending a 10 percent impairment of appellant's right lower limb, the Board finds that further development of the medical evidence is warranted.

The Board will set aside the Office's August 12, 2010 decision denying modification of appellant's schedule award and will remand the case for further development of the medical evidence. After such further development as may be necessary, the Office shall issue an appropriate final decision on whether appellant has more than a 10 percent impairment of his right leg as a result of his December 1, 2006 employment injury or authorized surgery.

---

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

[7] A.M.A., *Guides* 497 (6th ed. 2009).

[8] Dr. Anand, the attending orthopedic surgeon, applied the wrong edition of the A.M.A., *Guides*, which did not provide for grade modifiers.

Appellant argued on appeal that the March 6, 2010 MRI scan would have made a difference in his rating. On remand, the Office medical adviser should review the March 6, 2010 MRI scan findings, as well as the June 7, 2010 report of Dr. Lai, appellant's orthopedic surgeon, to determine whether the evidence warrants any increase in the impairment rating.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: June 2, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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