United States Department of Labor
Employees' Compensation Appeals Board

T.F., Appellant	)	
and	)	**Docket No. 13-24**
	)	**Issued: April 4, 2013**
DEPARTMENT OF THE NAVY, MARINE CORPS -- STATIONS, Camp LeJeune, NC, 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
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 3, 2012 appellant filed a timely appeal from a September 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding his schedule award claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than 23 percent permanent impairment of the right leg, for which he received a schedule award.

FACTUAL HISTORY

On April 12, 2006 appellant, then a 42-year-old coal handler equipment operator, sustained injury while getting off a tractor ladder. He stepped in a hole and twisted his right

[1] 5 U.S.C. §§ 8101-8193.

knee. OWCP initially accepted the claim for right knee strain. On July 21, 2006 appellant underwent right knee arthroscopy with partial medial and lateral meniscectomies and synovectomy. By decision dated May 11, 2007, OWCP granted him a schedule award for 17 percent permanent impairment of the right lower extremity. On April 8, 2008 it accepted the conditions of right knee primary localized osteoarthrosis, right medial meniscus tear, right lateral meniscus tear and synovitis. By decision dated October 5, 2009, OWCP found appellant's actual earnings as a material handler fairly and reasonably represented his wage-earning capacity and there was no loss in earning capacity. On February 12, 2010 appellant underwent right knee arthroscopy with complete synovectomy. On January 3, 2011 he underwent an approved right total knee replacement.[2] On May 4, 2012 appellant requested an additional schedule award.

On May 9, 2012 OWCP requested that its medical adviser review the medical reports of record and provide an impairment rating for loss of use of the right leg under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) and date of maximum medical improvement. In a May 9, 2012 report, Dr. James W. Dyer, an OWCP medical adviser, opined that appellant reached maximum medical improvement as of January 3, 2012, one year after his right total knee replacement. Following the knee replacement, appellant had right knee pain and tenderness and no atrophy. Using the sixth edition of the A.M.A., *Guides*, Dr. Dyer opined that, under Table 16-3, page 511, appellant had class 2 , grade C impairment or 25 percent impairment of the right lower extremity for a good result of total knee replacement. A grade modifier of 2 was given for Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS). The net adjustment formula was applied and resulted in zero net adjustment or no change from the default grade C. The medical adviser subtracted the previous award of 17 percent right leg impairment from the 25 percent impairment rating to find appellant had an additional 8 percent right leg impairment.

On May 14, 2012 OWCP received a permanent impairment worksheet of the lower extremity dated May 9, 2012 from Dr. Brian J. Battersby, Jr., a Board-certified orthopedic surgeon, who opined that appellant had 43 percent impairment of right lower extremity. Dr. Battersby opined that maximum medical improvement was reached on March 13, 2012. Under Table 16-3, page 511 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), he found that appellant was class 3, grade E for total knee replacement, with an impairment value of 43 percent. Dr. Battersby did not address how any grade modifier adjustments were made.

On May 23, 2012 OWCP requested that a medical adviser review Dr. Battersby's May 9, 2012 report. In a May 23, 2012 report, Dr. H.P. Hogshead, an OWCP medical adviser, referenced Dr. Dyer's report of May 9, 2012 that maximum medical improvement was reached by January 3, 2012. He noted that the medical evaluation of record found a stable knee with

[2] OWCP subsequently developed the issue of whether appellant had consequential left knee osteoarthritis and bilateral carpal tunnel syndrome. By decision dated August 7, 2012, OWCP's hearing representative set aside an April 10, 2012 decision denying the claimed consequential conditions and remanded the case to OWCP for additional development and a *de novo* decision. On November 19, 2012 OWCP accepted additional conditions of sprain of knee, lateral collateral ligament; localized primary osteoarthritis, bilateral lower leg; other and unspecified derangement of medial meniscus, right; derangement lateral meniscus, right; and bilateral carpal tunnel syndrome.

good range of motion post total knee replacement. A rating of class 2, grade C was recommended for 25 percent impairment of right lower extremity. As appellant previously received 17 percent impairment, he had an additional 8 percent impairment. Dr. Hogshead noted that Dr. Battersby stated that the result should be class 3, grade E resulting in 43 percent impairment, but the rating was not adequately explained and the sixth edition of the A.M.A., *Guides* was not specifically referenced. He recommended a second opinion examination.

OWCP referred appellant, together with his record, a statement of accepted facts and a list of questions to Dr. Edward R. Mulcahy, a Board-certified orthopedic surgeon, for an second opinion impairment evaluation. In an August 9, 2012 report, Dr. Mulcahy provided examination findings and reviewed the medical record. He advised that appellant could extend his knee fully and there was no instability on testing. Under the sixth edition of the A.M.A., *Guides,* Dr. Mulcahy opined that appellant had 18 percent impairment of the right leg. Under Table 16-3, he found appellant was class 2 for total knee replacement. Under Table 16.5 through Table 16.9, Dr. Mulcahy opined that appellant had Functional History modifier grade 2, Physical Examination grade modifier 1 and Clinical Studies grade modifier 2. Utilizing the net adjustment formula, he found a -1, which moved the default grade C to grade B or 18 percent impairment under Table 16-3. In an August 27, 2012 report, Dr. Mulcahy amended the impairment rating to reflect that under Table 16-3, page 511, a class 2, grade B would result in an impairment rating of 23 percent for the lower right extremity.

In a September 10, 2012 report, Dr. Hogshead reviewed Dr. Mulcahy's reports and agreed that the impairment rating of 23 percent for class 2, grade B under Table 16-3 of the A.M.A., *Guides* was correct. As appellant previously received an impairment of 17 percent impairment right lower extremity, Dr. Hogshead found that appellant had an additional 6 percent impairment. Dr. Hogshead noted that maximum medical improvement was achieved January 3, 2012.

By decision dated September 12, 2012, OWCP granted appellant a schedule award for additional 6 percent right leg impairment or a total impairment of 23 percent. The award ran for 17.28 weeks from August 26 to December 24, 2012.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations[3] 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.[4] 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 all claimants. The A.M.A., *Guides* has been adopted by the implementing

[3] 20 C.F.R. § 10.404.

[4] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

regulations as the appropriate standard for evaluating schedule losses.[5] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6]

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).[7] 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 GMFH, GMPE and GMCS.[8] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.[10]

ANALYSIS

OWCP accepted appellant's claim for right knee strain, right leg primary localized osteoarthrosis, right medial meniscal tear and right lateral meniscal tear. Appellant under a right knee arthroscopy on July 21, 2006, a second right knee arthroscopy with complete synovectomy, multiple cartilaginous drillings of the lateral femoral condyle and the trochlear groove on February 12, 2010 and a right total knee replacement on January 3, 2011. By decision dated May 11, 2007, OWCP granted him a schedule award for 17 percent impairment of the right leg. Appellant later claimed an increased schedule award for additional impairment. By decision dated September 12, 2012, it granted him an additional 6 percent impairment of the right lower extremity, for a total impairment of 23 percent based on the findings of Dr. Mulcahy and Dr. Hogshead.

The Board finds that OWCP properly relied on the opinion of Dr. Mulcahy and Dr. Hogshead that appellant has 23 percent right leg impairment.

In a May 9, 2012 impairment worksheet, Dr. Battersby, appellant's physician, opined that appellant had 43 percent right leg for class 3, grade E total knee replacement under Table 16-3, page 511 of the sixth edition of the A.M.A., *Guides*. The Board notes that he failed to explain

[5] *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[7] A.M.A., *Guides* 3, 6 (6th ed. 2008).

[8] *Id.* at 494-531.

[9] *Id.* at 521.

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

how he rated impairment or support how he arrived at a grade E rating. Further, Dr. Battersby did not address any grade modifiers or how they were applied to reach the final impairment rating. It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value. OWCP may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.[11]

When OWCP requested that Dr. Hogshead reviewed Dr. Battersby's May 9, 2012 report, he noted that Dr. Battersby did not adequately explain his impairment finding and recommended a second opinion examination. The Board finds that this development was proper as Dr. Battersby's report supports how the physical examination merited a finding of a class 3, grade E impairment for appellant's total knee replacement.

Dr. Mulcahy, a Board-certified orthopedic surgeon and OWCP referral physician, found that appellant had 23 percent permanent impairment of the right lower extremity for total knee replacement. Under Table 16-3, page 511, he found that appellant had class 2 rating for total knee replacement based on the statement of accepted facts and examination findings. Dr. Mulcahy found on examination that appellant could extend his knee fully and had no knee instability on testing. He utilized Table 16.5 through Table 16.9 to find grade modifiers of 2 for functional history, 1 for physical examination, and 2 for clinical studies. Dr. Mulcahy applied the grade modifiers to the net adjustment formula and found a net adjustment of -1. Under the net adjustment formula, (GMFH - CDX) (2-2) + (GMPE - CDX) (1-2) + (GMCS - CDX) (2-2) results in a net adjustment of -1. This represents grade B or 23 percent right lower extremity impairment for total knee replacement.

Dr. Hogshead reviewed Dr. Mulcahy's reports and concurred in his impairment rating. He noted that appellant was previously granted 17 percent impairment of the right lower extremity for the knee problem had an additional impairment of 6 percent for total knee replacement. When a current impairment rating duplicates a prior rating, the schedule award benefits are reduced by the period of compensation paid under the schedule award for an earlier injury.[12] Since the current impairment for the right lower extremity was 23 percent and appellant was previously paid for 17 percent impairment, he is entitled to an additional award of 6 percent. The Board finds that OWCP properly awarded an additional schedule award of six percent lower extremity impairment in this case. The Board finds that the medical evidence establishes that appellant sustained no more than a 23 percent total impairment of the right lower extremity.

On appeal, appellant states that he has additional problems with his knee replacement and he does not understand how Dr. Mulcahy could provide a lower rating than Dr. Battersby. As noted, Dr. Mulcahy provided an impairment rating consistent with the examination findings utilizing the A.M.A., *Guides*. The rating of Dr. Battersby did not fully comply with the A.M.A., *Guides*.

[11] A.M.A., *Guides* 521. *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[12] *T.S.* Docket No. 09-1308 (issued December 22, 2009); 20 C.F.R. § 10.404(c).

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has no more than 23 percent total permanent impairment of the right lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2013
Washington, DC

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

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

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