United States Department of Labor
Employees' Compensation Appeals Board

H.S., Appellant	)	
and	)	**Docket No. 12-1585**
	)	**Issued: February 12, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Langhorne, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 18, 2012 appellant, through his attorney, filed a timely appeal from a May 7, 2012 Office of Workers' Compensation Programs' (OWCP) schedule award decision. 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 this case.

ISSUE

The issue is whether appellant has more than two percent impairment to his left lower extremity.

FACTUAL HISTORY

This is the third appeal before the Board. Appellant, then a 49-year-old letter carrier, injured his left knee on August 11, 1997. OWCP accepted the claim for left knee sprain. A magnetic resonance imaging (MRI) scan appellant underwent on September 9, 1997 showed

[1] 5 U.S.C. § 8101 *et seq.*

degeneration and a linear tear of the medial meniscus. Appellant underwent a partial meniscectomy on September 26, 1997 to repair his left medial meniscus. He subsequently stopped work and filed a claim for a recurrence of disability beginning June 1, 1998, alleging that he was unable to walk or drive and could not perform his regular duties at work. Appellant requested authorization for total knee replacement of the left knee; the surgery was performed on June 17, 1998 but was not authorized by OWCP. By decision dated November 20, 1998, OWCP denied his claim for a recurrence of disability and terminated his compensation. By decision dated January 24, 2000, it denied modification of its November 20, 1998 decision. In an August 14, 2001 decision,[2] the Board reversed OWCP's recurrence and termination decisions. The Board found that appellant had submitted medical evidence sufficient to require further development of the evidence regarding these issues.

OWCP found that there was a conflict in the medical evidence regarding whether: (a) the diagnosed condition was medically connected to the work injury and/or factors of employment as described in the statement of accepted facts either by direct cause, aggravation, precipitation, or acceleration; and (b) whether appellant's left total knee replacement of June 1998 was medically connected to the 1997 left knee injury and/or appellant's employment as a letter carrier. The case file was referred to Dr. Marvin N. Kallish, Board-certified in orthopedic surgery, for an independent medical evaluation to resolve the conflict in medical evidence. Dr. Kallish confirmed a diagnosis of left knee arthritis, which reflected long-standing changes; however, he found that the knee was already compromised and that appellant's long-standing arthritis was not causally related to the August 11, 1997 injury. He diagnosed a sprain/strain of the knee, left side, with preexisting changes. Dr. Kallish also found that the total knee replacement was not related in any way to the August 1997 work injury.

By decision dated May 31, 2002, OWCP denied the claim for recurrence of disability, finding that Dr. Kallish represented the weight of the medical evidence. By decision dated July 6, 2004, an OWCP hearing representative affirmed the May 31, 2002 OWCP decision. In a decision dated March 23, 2005,[3] the Board affirmed the July 6, 2004 OWCP decision. The complete facts of this case are set forth in the Board's August 14, 2001 and March 23, 2005 decisions and herein incorporated by reference.

In a Form CA-7 dated September 8, 2005, appellant requested a schedule award based on a partial loss of use of his left lower extremity.

In a November 12, 2010 report, Dr. David Weiss, an osteopath, rated 10 percent left lower extremity permanent impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). He made the following diagnoses: post-traumatic chondromalacia in the patella of the left knee; advanced degenerative joint disease in the left knee; status post arthroscopic surgery, September 26, 1997; and status post left total knee arthroplasty, June 17, 1998. Dr. Weiss noted that appellant ambulated with a symmetrical gait and was able to get on and off the examination table without any difficulty. On examination, he measured a quadriceps circumferential at 10 centimeters

[2] Docket No. 00-1805 (issued August 15, 2001).

[3] Docket No. 05-91 (issued March 23, 2005).

above the patella to be a difference of 1 centimeter; the gastrocnemius circumferential measured a difference of 3 centimeters. Appellant had marked crepitus in both the medial and lateral joint compartments.

Using the Knee Regional Grid for rating lower extremity impairments of the knee at Table 16-3, page 511, Dr. Weiss measured a class 1 impairment based on left knee primary joint arthritis. He found that appellant had a score of 39 under the Lower Extremity Activity Scale, which produced a grade modifier of 1 for functional history. Using the physical examination grid at Table 16-7, page 517, Dr. Weiss found that appellant had a grade modifier of 2, for observed and palpatory findings. As there were no clinical tests performed, such as x-rays or magnetic resonance imaging (MRI) scans, he rated a zero grade modifier for clinical studies.[4] Applying the net adjustment, grade modifier formula at pages 521-22 of the A.M.A., *Guides,*[5] Dr. Weiss subtracted the grade modifier of 1 from functional history, physical examination and clinical studies. He added the totals of 0, 1 and minus 1 for a net adjusted left lower extremity impairment of zero. Dr. Weiss concluded that the overall, net adjusted impairment for the left lower extremity based on primary knee joint arthritis was seven percent.

Dr. Weiss rated a three percent left lower extremity impairment for left patellafemoral arthritis using Table 16-3. He measured a class 1 impairment, rated a grade modifier of 1 for functional history, a grade modifier of 2 for physical examination and zero for clinical studies.[6] This produced a net adjusted impairment of three percent for the left lower extremity based on patellafemoral arthritis, for a total 10 percent left lower extremity impairment.

In a report dated April 27, 2011, Dr. Christopher R. Brigham, Board-certified in occupational medicine and an OWCP medical adviser, reviewed Dr. Weiss' report and found that appellant had a two percent impairment of the left lower extremity pursuant to the sixth edition of the A.M.A., *Guides*. He stated that Dr. Weiss' rating was based on a preexisting left knee arthritis condition which OWCP did not accept. Dr. Brigham, utilizing the diagnosis-based method of rating impairment, based his impairment rating on the diagnosis of lateral meniscus tear. He stated that appellant had a class 1 impairment under the Knee Regional Grid at Table 16-3, page 509, of the A.M.A., *Guides*[7] for the diagnosis of partial, medial/lateral meniscectomy, meniscal tear, or meniscal repair, which yielded a default impairment of two percent for the left lower extremity. Applying the net adjustment, grade modifier formula at pages 521-22 of the A.M.A., *Guides,*[8] Dr. Brigham determined that the grade at Table 16-6, page 516 for functional history was zero, noting that Dr. Weiss found appellant was able to walk with a symmetrica1 gait and get on and off the examination table with no difficulty; the grade for physical examination at Table 16-7, page 517 was 3, for moderate atrophy, as Dr. Weiss noted on examination that appellant had marked crepitance and three centimeters of atrophy of the

[4] A.M.A., *Guides* 509.

[5] *Id.* at 521-22.

[6] *Id.* at 509.

[7] *Id.*

[8] *Id.* at 521-22.

gastrocnemius. He accorded no grade for clinical studies, given the absence of diagnostic tests. Dr. Brigham then subtracted the grade modifier of 1 from each of these calculations, for a net adjusted grade of -1 for functional history and 2 for physical examination, for an adjusted grade of 1, or class D impairment, which produced a two percent net adjusted impairment for the left lower extremity.[9]

On May 3, 2011 OWCP granted appellant a schedule award for a two percent permanent impairment of the left lower extremity for the period May 12 to June 21, 2011, for a total of 5.76 days of compensation.

By letter dated May 6, 2011, appellant's attorney requested an oral hearing, which was held on August 9, 2011.

By decision dated September 30, 2011, an OWCP hearing representative set aside the May 3, 2011 decision. He found that OWCP failed to consider whether appellant had additional impairment to the left lower extremity due to a preexisting condition, degenerative arthritis in the left knee. The hearing representative therefore remanded the case and directed OWCP to refer the case file to OWCP's medical adviser to determine whether appellant was entitled to a left lower extremity impairment for his preexisting arthritis condition.

In an October 19, 2011 report, Dr. Brigham noted that OWCP had instructed him to consider whether appellant had any ratable impairment based on his preexisting arthritis. He stated, however, that Dr. Weiss did not provide x-ray results which showed joint space measurements in appellant's left knee to support his class 1 rating for arthritis. Dr. Brigham further advised that as a result of the total knee replacement the joint space intervals no longer existed because appellant now had a prosthetic device as a knee joint. He therefore determined that appellant's knee arthritis was no longer present and not ratable. Dr. Brigham reiterated the findings he made in his April 27, 2011 report, including his rating of a two percent left lower extremity impairment based on partial meniscectomy of the left knee.

By decision dated May 7, 2012, OWCP found that appellant had no additional impairment of the left lower extremity greater than the two percent already awarded.

LEGAL PRECEDENT

The schedule award provision of FECA[10] and its implementing regulations[11] 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, FECA 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 all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the

[9] *Id.* at 510.

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

appropriate standard for evaluating schedule losses.[12] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[13]

The sixth edition of the A.M.A., *Guides*[14] provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[15] 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).[16] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[17]

ANALYSIS

Dr. Brigham properly determined that appellant had a two percent left lower extremity impairment based on partial meniscectomy of the left knee. The Board notes that the A.M.A., *Guides* directs examiners to rate diagnosis-based impairments for the lower extremities pursuant to Chapter 16, which states at page 497, section 16.2a that impairments are defined by class and grade.[18] In accordance with this section, the examiner is instructed to utilize the net adjustment formula outlined at pages 521-22 of the A.M.A., *Guides*,[19] to obtain the proper impairment rating. Dr. Brigham relied on the adjustment grid at section 16.3a, Table 16-6,[20] to assign appellant a functional history grade modifier of zero, consistent with "no problem." For physical examination, he relied on the adjustment grid at section 16.3b, Table 16-7,[21] to assign appellant a physical examination grade modifier of 3 for Dr. Weiss' measurement of atrophy of three centimeters difference in the gastrocnemius, with marked crepitance. With regard to clinical studies, Dr. Brigham relied on the adjustment grid at section 16.3c, Table 16-8,[22] to find that a grade modifier for clinical studies was not applicable, as Dr. Weiss did not utilize diagnostic tests in his November 12, 2010 report. He then subtracted the grade modifier of 1 from each of

[12] *Id.*

[13] *Veronica Williams*, 56 ECAB 367, 370 (2005).

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

[15] A.M.A., *Guides*, *supra* note 1 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[16] A.M.A., *Guides*, *supra* note 1 at 494-531.

[17] *Id*. at 521.

[18] *Id.* at 497.

[19] *Id.* at 521-22.

[20] *Id.* at 516.

[21] *Id.* at 517.

[22] *Id.* at 519.

these calculations, for a net adjusted grade of +1, or class D impairment, which produced a two percent, net adjusted lower extremity impairment for the left knee.

On remand, OWCP instructed its medical adviser to determine whether appellant was entitled to a left lower extremity impairment based on his preexisting arthritis condition, as indicated by Dr. Weiss in his November 12, 2010 report. The Board notes that section 16.3c, page 518 of the A.M.A., *Guides* states:

> "Imaging studies are used to grade arthritis. Cartilage interval or joint space is the best roentgenographic indicator of disease stage and impairment for a person with arthritis of the lower extremity. The hallmark of all types of arthritis is thinning of the articular cartilage; this correlates well with disease progression. The impairment estimates in a person with arthritis of the lower extremity are based on standard x-rays taken with the individual standing, if possible."[23]

In his October 19, 2011 report, Dr. Brigham properly found that Dr. Weiss did not provide a basis for an impairment rating based on left knee arthritis under the A.M.A., *Guides* because his report did not contain x-ray results which showed joint space measurements in appellant's left knee. More significantly, he found that as a result of appellant's total knee replacement surgery the joint space intervals in the left knee no longer existed since he now had a prosthetic device serving as a knee joint. Thus Dr. Weiss' November 12, 2010 report, which found that appellant had a 10 percent impairment of the left lower extremity based on preexisting arthritis in the left knee, was in accordance with the applicable protocols of the A.M.A., *Guides*. Dr. Brigham properly determined that appellant's knee arthritis is no longer present and cannot be rated.

The Board finds that Dr. Brigham properly determined that appellant did not have an impairment of the left lower extremity greater than that already awarded, as he calculated this rating based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. While Dr. Weiss found that appellant had a 10 percent left lower extremity impairment, his report is of diminished probative weight, as he did not utilize the proper methods to correlate this rating to the sixth edition of the A.M.A., *Guides*.[24] OWCP properly found that the opinion of its medical adviser, Dr. Brigham, constituted sufficient medical rationale to support the March 5, 2012 schedule award decision.

Appellant has submitted no other medical evidence indicating that he has an impairment greater than two percent to his left lower extremity. The Board will affirm OWCP's May 7, 2012 decision denying an additional schedule award for the left lower extremity.

[23] *Id.* at 518.

[24] The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *See Peter C. Belkind,* 56 ECAB 580, 585 (2005). The Board notes that Dr. Beebe provided differing impairment ratings in several reports, which further diminished the probative weight of his opinion.

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 more than two percent impairment to his left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 12, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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