United States Department of Labor
Employees' Compensation Appeals Board

T.K., Appellant	)	
and	)	**Docket No. 13-210**
	)	**Issued: September 11, 2013**
DEPARTMENT OF THE NAVY, NAVAL AIR STATION NORTH ISLAND, San Diego, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2012 appellant filed a timely appeal from an August 2, 2012 schedule award decision of the Office of Workers' Compensation Programs (OWCP). 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 schedule award decision.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has greater than two percent impairment of the right lower extremity.

On appeal, appellant asserts that the opinion of the attending physician establishes entitlement to a greater award.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 3, 2010 appellant, then a 36-year-old general aircraft examiner, filed a traumatic injury claim alleging that on February 3, 2010 he injured his right knee when he tripped at work.[2] A March 15, 2010 magnetic resonance imaging (MRI) scan study of the right knee demonstrated a tear of the popliteal tendon, a small focal radial tear of the body of the medial meniscus and a complete ACL tear. OWCP accepted that appellant sustained a medial meniscus tear of the right knee and right knee and leg sprain. On May 7, 2010 Dr. Christopher S. Pallia, a Board-certified orthopedic surgeon, performed arthroscopic repair of the right ACL. In his surgical report, he identified both a right ACL tear and a right medial meniscus tear. OWCP authorized the surgery. Appellant received appropriate wage-loss compensation following surgery, and returned to modified duty on August 2, 2010 and to full time, regular duty on October 21, 2010. On January 14, 2011 Dr. Pallia performed a partial right knee lateral meniscectomy with chondroplasty of the medial femoral condyle and medial facet patella. Appellant received appropriate compensation and returned to modified full-time duty on February 17, 2011. In a February 21, 2011 report, Dr. Pallia described appellant's postoperative recovery and noted that he complained that his right knee hyperextended. He recommended a consultation with Dr. John G. Lane, a Board-certified orthopedic surgeon.

OWCP authorized an office visit with Dr. Lane, and in an April 19, 2011 report, he noted the history of injury and appellant's complaint of intermittent right knee pain and hyperextension. Dr. Lane provided physical examination findings and diagnosed right knee ACL tear with surgical reconstruction, right knee partial lateral meniscectomy, and unrelated left knee ACL reconstruction. He advised that he could find nothing to cause appellant's right knee pain and no evidence of hyperflexion of the right knee. Dr. Lane noted that appellant's left knee condition, which was not employment related,[3] had a flexion contracture and concluded that there was no need for further surgery.

On June 14, 2011 appellant filed a schedule award claim and submitted a May 4, 2011 report in which Dr. Pallia provided right knee physical examination findings. These included range of motion with flexion of 130 degrees and extension of minus eight degrees. Dr. Pallia indicated that appellant had reached maximum medical improvement and advised that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[4] appellant had four percent whole person impairment with regard to his knee.

By letter dated August 8, 2011, OWCP informed Dr. Pallia that impairment determinations were to be calculated in accordance with the sixth edition of the A.M.A., *Guides*[5] and asked that he submit an appropriate report.

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[2] In an employing establishment clinic note dated February 4, 2010, Dr. Nancy E. Huth, a Board-certified internist, noted a past medical history of left anterior cruciate ligament (ACL) repair.

[3] *Id*.

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

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

On September 29, 2011 Dr. Christopher R. Brigham, an OWCP medical adviser Board-certified in family and preventive medicine, reviewed the medical record including Dr. Pallia's May 4, 2011 report. He noted appellant's past surgical history of both a right knee ACL reconstruction and a right partial meniscectomy. Dr. Brigham determined that the date of maximum medical improvement was May 4, 2011, the date of Dr. Pallia's evaluation. He indicated that Dr. Pallia had not utilized the sixth edition of the A.M.A., *Guides* and that both knee diagnoses would appropriately be rated under Table 16-3, Knee Regional Grid. Dr. Brigham reported that Dr. Lane found no ligament laxity on April 19, 2011 whereas on May 14, 2011 Dr. Pallia reported laxity of two millimeters. He indicated that, under the sixth edition, if there is an inconsistency in a rating class between the findings of two observers or in the findings on separate occasions by the same observer, the results were considered invalid. Dr. Brigham then rated appellant's right knee impairment under the diagnosis of partial lateral meniscectomy and found a class 1 impairment under Table 16-3, which had a default score of two percent. He applied grade modifiers, noting that the modifiers for Functional History (GMFH) and Clinical Studies (GMCS) were not applicable and found a Physical Examination (GMPE) modifier of one. After applying the net adjustment formula, Dr. Brigham concluded that appellant had two percent right lower extremity impairment.

In an August 23, 2011 report, received by OWCP on October 31, 2011, Dr. Pallia advised that maximum medical improvement was reached on May 4, 2011 and diagnosed right knee complete ACL tear and tear of the anterior horn of the lateral meniscus, status postsurgical repair of both. He advised that appellant had a residual mild hyperextension laxity of the right knee. Dr. Pallia indicated that, under Table 16-3 of the sixth edition, appellant's meniscal injury yielded two percent right lower extremity impairment and his ACL injury with mild laxity yielded 10 percent impairment. He applied modifiers, finding an additional plus 1 adjustment, which yielded a total 12 percent impairment for the ACL injury. Dr. Pallia then added the 12 percent ACL impairment with the two percent meniscal impairment, for a total 14 percent impairment of the right leg.

On December 13, 2011 appellant was granted a schedule award for a two percent impairment of the right leg. OWCP noted that the medical evidence included a May 4, 2011 impairment rating from Dr. Pallia, which was reviewed by Dr. Brigham on September 29, 2011. It found that Dr. Brigham properly calculated appellant's schedule award in accordance with the sixth edition of the A.M.A., *Guides*.

On April 24, 2012 appellant requested reconsideration, asserting that OWCP should have reviewed Dr. Pallia's August 23, 2011 report in assessing his right leg impairment. He submitted an April 4, 2012 report in which Dr. Pallia advised that he had reviewed Dr. Brigham's report and noted that Dr. Brigham did not review his August 23, 2011 report in which he rated appellant in accordance with the sixth edition of the A.M.A., *Guides*. Dr. Pallia stated that it was clear that appellant had hyperextension laxity of his right knee, although nothing could be done surgically to improve it. He reiterated that appellant had 14 percent impairment of the right lower extremity.

In a May 12, 2012 report, Dr. Leonard A. Simpson, an OWCP medical adviser, noted his review of the medical record, including Dr. Pallia's May 4 and August 23, 2011 reports and the September 29, 2011 report of Dr. Brigham, an OWCP medical adviser. He reported diagnoses of

status post partial lateral meniscectomy and ACL tear with reconstruction and recommended that OWCP expand the work-related diagnoses to include status post partial lateral meniscectomy and right ACL reconstruction. Dr. Simpson agreed with Dr. Brigham's conclusion that this would indicate no impairment for the ACL condition because the records did not indicate definitive ligament laxity following ACL reconstruction. He concurred with the finding that appellant was appropriately rated for partial meniscectomy and had a class 1 impairment with a default value of two percent. Dr. Simpson indicated that modifiers for functional history and clinical studies were not applicable and found a physical examination modifier of one for a net adjustment of zero, for a total two percent impairment of the right lower extremity, with maximum medical improvement reached on May 4, 2011.

In a merit decision dated August 2, 2012, OWCP found that appellant was not entitled to an additional schedule award for right leg impairment. It noted that Dr. Pallia rated appellant on both meniscectomy and persistent laxity of the knee and found that the weight of the medical evidence rested with the opinion of Dr. Simpson, an OWCP medical adviser.

LEGAL PRECEDENT

The schedule award provision of FECA[6] and its implementing federal regulations[7] 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[8] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[9] For decisions issued after May 1, 2009, the sixth edition will be used.[10]

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).[11] 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.[12] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13] Under Chapter 2.3, evaluators are directed to

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id*. at § 10.404(a).

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

[10] FECA Bulletin No. 09-03 (issued March 15, 2009).

[11] A.M.A., *Guides*, *supra* note 5 at 4, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

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

[13] *Id*. at 521.

provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[14]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP 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.[15] In determining entitlement to a schedule award, preexisting impairment to the scheduled member is to be included.[16]

ANALYSIS

OWCP accepted that appellant sustained a right knee medial meniscus tear and right knee and leg sprain. It has not accepted an ACL tear as employment related. On December 13, 2011 appellant was granted a schedule award for two percent impairment of the right leg, based on the September 29, 2011 report of Dr. Brigham, an OWCP medical adviser. On April 24, 2011 appellant requested reconsideration and submitted an April 4, 2012 report from Dr. Pallia, an attending orthopedic surgeon, who disagreed with Dr. Brigham's analysis, and maintained that appellant had a 14 percent impairment, two percent due to his meniscal injury and 12 percent due to his ACL injury. On May 12, 2012 Dr. Leonard Simpson, an OWCP medical adviser, reviewed Dr. Pallia's reports. Dr. Pallia and Dr. Simpson agreed that under Table 16-3, Knee Regional Grid, appellant's medial meniscus tear yielded a class 1 impairment with a default value of two percent and appellant had been granted a schedule award in that amount.

As noted above, however, Dr. Pallia indicated that appellant had an additional 12 percent impairment for his ACL condition, based on right knee laxity. The sixth edition of the A.M.A., *Guides*, provides that if more than one diagnosis in a region such as the knee can be used, the one that provides the most clinically accurate and causally-related impairment rating should be used,[17] and Table 16-3 provides separate analyses for meniscal and ACL impairments.[18] Dr. Pallia therefore erred in adding the impairment values for appellant's meniscal and ACL diagnoses, and appellant would not be entitled to an impairment rating based on both diagnoses.

Moreover, as noted by Dr. Brigham in his September 29, 2011 report, and concurred with by Dr. Simpson on May 12, 2012, section 16.3b of the A.M.A., *Guides* provides that "if multiple previous evaluations have been documented, and there is inconsistency in a rating class between the findings of two observers, or in the findings on separate occasions by the same observer, the results are considered invalid."[19]

[14] *Id*. at 23-28.

[15] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

[16] *Peter C. Belkind*, 56 ECAB 580 (2005).

[17] A.M.A., *Guides*, *supra* note 5 at 499.

[18] *Id*. at 509-10.

[19] *Id*. at 517-18.

The record supports that, while Dr. Pallia found knee laxity in several reports, Dr. Lane, an OWCP referral physician, found no laxity in his April 19, 2011 examination. In accordance with section 16.3b of the A.M.A., *Guides*, appellant would not be entitled to an award based on the physical finding of right knee laxity because there were inconsistent results on the physical examinations performed by Dr. Pallia and Dr. Lane. Appellant therefore has not established that he is entitled to a schedule award greater than two percent.

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 is not entitled to a schedule award for the right lower extremity greater than the two percent previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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