

United States Department of Labor
Employees' Compensation Appeals Board

RAUL PINA, Appellant)	
)	
and)	
)	Docket No. 05-1262
)	Issued: September 22, 2005
DEPARTMENT OF HOMELAND SECURITY,)	
BUREAU OF CUSTOMS & BORDER)	
PROTECTION, BORDER PATROL,)	
Kingsville, TX, Employer)	

Appearances:
Raul Pina, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On May 23, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated February 1, 2005, denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the February 1, 2005 schedule award decision.

ISSUE

The issue is whether appellant has any permanent impairment of the right lower extremity that would entitle him to a schedule award.

FACTUAL HISTORY

On November 8, 2003 appellant, then a 23-year-old border patrol agent, filed a traumatic injury claim alleging that he injured his right knee when he stood up and hyperextended it. The Office accepted his claim for a right knee sprain. The Office subsequently expanded the accepted conditions to include a tear of the anterior cruciate ligament (ACL). On January 9,

2004 appellant underwent right knee surgery consisting of ACL reconstruction, followed by a course of physical therapy. Appellant later filed a claim for a schedule award.

In a report dated May 17, 2004, Dr. R. Chandrasekharan, an attending Board-certified orthopedic surgeon, indicated that he evaluated appellant on May 10, 2004. He stated:

“[Appellant’s] knee had full range of motion. Knee joint was stable. Pronator shift was negative. Lachman’s test was negative. [Appellant] had an anterior cruciate ligament tear that required reconstruction. He has reached maximum medical improvement at this time. He would require an anterior cruciate ligament brace for any athletic activities or heavy work. Because of the anterior cruciate ligament tear, his impairment rating would be three percent per Table 17-33, page 546 of the fifth edition of the [American Medical Association], *Guides to the Evaluation of Permanent Impairment*.”

In a July 22, 2004 memorandum, Dr. Ronald H. Blum, an Office medical adviser, stated that appellant’s accepted conditions were a sprain of the right lateral collateral ligament and a tear of the ACL that was reconstructed with a hamstring graft. He stated:

“Dr. Chandrasekharan notes full ROM [range of motion], a stable knee joint, pronator (pivot?) shift was negative and Lachman’s test was negative. He recommends seven [sic, three] percent PPI [permanent partial impairment] for the RLE [right lower extremity] based on [Table] 17-33, [page] 546. That table does recommend seven percent PPI for mild ACL laxity. The descriptions of Dr. Chandrasekharan leave little doubt [that] there is no significant laxity as a result of the ACL tear. The [A.M.A.] *Guides* recommend[s] impairment based on residual laxity and not on having sustained a tear of the ACL. It is for this reason I am unable to recommend any impairment resulting from the accepted condition and required treatment.

“Permanent impairment of the RLE is zero percent.”

In order to resolve the conflict in the medical opinion evidence between Dr. Chandrasekharan and Dr. Blum as to whether appellant had any permanent impairment of his right lower extremity, the Office referred appellant, together with a statement of accepted facts and the case file, to Dr. John O. Krause, a Board-certified orthopedic surgeon.

In a report dated October 13, 2004, Dr. Krause provided a history of appellant’s condition and course of treatment and diagnosed a history of a right ACL tear and status post ACL reconstruction with a hamstring autograft with full range of motion and no laxity. He based his impairment evaluation on the fifth edition of the A.M.A., *Guides*. Dr. Krause stated:

“[Appellant] has normal alignment of the lower extremities. He has well-healed surgical incisions around his right knee. [Appellant] has no effusion. He has full extension and flexion beyond 150 degrees. [Appellant] has no varus or valgus

laxity. He has negative Lachman and a negative pivot shift and a negative anterior drawer. [Appellant] has no thigh atrophy. His quadriceps measure 52 [centimeters] bilaterally. ... He has no joint line tenderness.”

* * *

“1. Given [that appellant] has no residual laxity and full range of motion, he has permanent impairment of his right lower extremity with an impairment rating of zero percent. I agree with Dr. Blum that the [A.M.A., *Guides*] make no compensation for a patient who has a good result after an ACL reconstruction if he gets back to full range of motion without laxity.

“2. Date of maximum medical improvement is May 17, 2004.

“3. There are no restrictions on range of motion.

“4. There are no objective findings other than the surgical scars.

“5. [Appellant’s] only subjective complaints are intermittent discomfort while standing. [He] reports he is now back playing sports, namely basketball.”

By decision dated February 1, 2005, the Office denied appellant’s claim for a schedule award on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Krause, established that he had no permanent impairment of his right lower extremity based on the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² sets 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 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*³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁴ *See* 20 C.F.R. § 10.404.

Section 8123(a) of the Act provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁵ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁶

ANALYSIS

Dr. Chandrasekharan found that appellant had a three percent permanent impairment of the right lower extremity because of his ACL tear, based on Table 17-33 at page 546 of the A.M.A., *Guides*.⁷ Dr. Blum found that Table 17-33 provided for a seven percent impairment of the lower extremity for a mild laxity of the cruciate ligament but that Dr. Chandrasekharan did not describe residual laxity as a result of the ACL tear. He determined that appellant had no permanent impairment of the right lower extremity based on the A.M.A., *Guides*. Due to the conflict between Dr. Chandrasekharan and Dr. Blum regarding the issue of appellant's right lower extremity impairment, the Office properly referred appellant to Dr. Krause.

Dr. Krause diagnosed a history of a right ACL tear and status post ACL reconstruction and provided an impairment rating based on the fifth edition of the A.M.A., *Guides*. He found that appellant had full extension and flexion beyond 150 degrees and no varus or valgus laxity. Appellant had a negative Lachman's test, negative pivot shift, negative anterior drawer and no thigh atrophy. Dr. Krause found that appellant had no residual laxity and full range of motion and noted that the A.M.A., *Guides* did not provide an impairment rating for a patient who has full range of motion without laxity following an ACL reconstruction.⁸ He determined that appellant had no impairment of the right lower extremity based on the A.M.A., *Guides*.

The Board finds that the thorough report of Dr. Krause, which is based on correct application of the A.M.A., *Guides*, is entitled to special weight and establishes that appellant has no permanent impairment of the right lower extremity. Therefore, the Office properly denied his claim for a schedule award.

CONCLUSION

The Board finds that appellant failed to establish that he had any permanent impairment of the right lower extremity causally related to his November 8, 2003 employment injury.

⁵ 5 U.S.C. § 8123(a); see also *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁶ See *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁷ Table 17-33 actually provides for a three percent impairment for the whole body which is equal to a seven percent impairment of the lower extremity. A.M.A., *Guides* 546, Table 17-33.

⁸ Table 17-33 at page 546 of the A.M.A., *Guides* provides for a lower extremity impairment rating of seven percent for mild cruciate ligament laxity. There is no provision for an impairment rating based solely on an ACL tear.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2005 is affirmed.

Issued: September 22, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board