

**United States Department of Labor
Employees' Compensation Appeals Board**

C.D., Appellant)
)
and) **Docket No. 12-1115**
) **Issued: December 27, 2012**
U.S. POSTAL SERVICE, POST OFFICE,)
St. Louis, MO, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 11, 2012 appellant filed a timely appeal of a November 18, 2011 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant originally requested an oral argument. The Clerk of the Board sent a letter dated May 1, 2012 asking him to confirm his continuing desire for an oral argument held in Washington, DC. Since no written confirmation was received, the Board in its discretion will decide the appeal on the record.

FACTUAL HISTORY

On February 10, 2010 appellant, then a 49-year-old city carrier, injured his right knee while in the performance of duty. A February 10, 2010 x-ray obtained by Dr. Kristopher W. Cummings, a Board-certified diagnostic radiologist, noted mild right patellofemoral osteoarthritis and joint effusion. Appellant underwent right quadriceps tendon repair surgery on February 23, 2010 and eventually returned to work. OWCP accepted his traumatic injury claim for right quadriceps rupture³ and paid disability compensation accordingly.⁴

Appellant filed a claim for a schedule award on June 25, 2011 and submitted medical evidence. In an April 6, 2011 report, Dr. Paul J. Scherer, a Board-certified orthopedic surgeon, related that the right knee was symptomatic since December 2010. On physical examination, he observed normal range of motion (ROM), bulk, and tone as well as the absence of effusion, joint line tenderness, and instability. Dr. Scherer elicited right knee pain during patellofemoral grind testing. X-rays showed mild bilateral patellofemoral osteoarthritis that was especially prominent on the right side because of the February 10, 2010 injury. Dr. Scherer opined that appellant sustained 20 percent permanent impairment of the right lower extremity. He did not refer to the A.M.A., *Guides* in rating impairment.

On July 21, 2011 Dr. Neil S. Ghodadra, an OWCP medical adviser and orthopedic surgeon, reviewed Dr. Scherer's April 6, 2011 report. He disagreed with the impairment rating. Dr. Ghodadra pointed out that Dr. Scherer did not utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁵ (hereinafter A.M.A., *Guides*). Applying Table 16-3 (Knee Regional Grid) on page 509 of the A.M.A., *Guides*, he assigned an impairment class of 1 with a default grade of C for ruptured right knee tendon, with good results, which amounted to a two percent impairment rating. Dr. Ghodadra listed April 6, 2011 as the date of maximum medical improvement.

By decision dated November 18, 2011, OWCP granted a schedule award for two percent permanent impairment of the right leg which ran for the period April 6 to May 16, 2011.⁶

³ OWCP noted that the claim was originally received as a simple, uncontroverted case resulting in minimal or no lost time from work and payment was approved for limited medical expenses without formal adjudication.

⁴ By decision dated July 15, 2011, OWCP denied appellant's claim for compensation, finding the medical evidence insufficient to establish that he was disabled on August 14, 2010 due to his employment injury. This matter is not presently before the Board.

⁵ A.M.A., *Guides* (6th ed. 2008).

⁶ OWCP's decision has two harmless typographical errors. First, it identified the left upper extremity as the impaired member. Second, OWCP indicated that appellant sustained seven percent impairment. Both the decision and a November 18, 2011 compensation worksheet specified that schedule award coverage lasted from April 6 to May 16, 2011, amounting to 5.76 weeks. This duration corresponds with a schedule award granted for two percent permanent impairment of a lower extremity. See 5 U.S.C. § 8107(c)(2) (employee entitled to a maximum award of 288 weeks of compensation for complete loss of a leg); 5 U.S.C. § 8107(c)(19) (amount of compensation paid is in proportion to the percentage of loss of use of a scheduled member when such loss is less than 100 percent).

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss of or loss of use of scheduled members or functions of the body.⁷ 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 appropriate standard for evaluating schedule losses.⁸

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). 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). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.⁹

ANALYSIS

The Board finds that the medical evidence does not establish that appellant sustained more than two percent permanent impairment of the right lower extremity.

Appellant sustained a right knee injury on February 10, 2010 while in the performance of duty, which OWCP accepted for right quadriceps rupture. Thereafter, he filed a claim for a schedule award and submitted medical evidence. In an April 6, 2011 report, Dr. Scherer examined appellant and calculated an impairment rating of 20 percent. According to OWCP procedures, an attending physician's impairment rating report must include a detailed description of the impairment and a rationalized opinion as to the percentage of permanent impairment under the A.M.A., *Guides*.¹⁰ In the present case, however, Dr. Scherer failed to utilize the A.M.A., *Guides*. Therefore, his report was of diminished probative value.¹¹ On the other hand, the July 21, 2011 report of OWCP's medical adviser, Dr. Ghodadra, reviewed Dr. Scherer's objective findings, applied Table 16-3 of the A.M.A., *Guides*, for a quadriceps rupture with good results and concluded that appellant sustained two percent permanent impairment of the right

⁷ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁸ *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

⁹ *R.V.*, Docket No. 10-1827 (issued April 1, 2011)

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(a)-(c) (January 2010).

¹¹ *J.G.*, Docket No. 09-1128 (issued December 7, 2009).

lower extremity.¹² The case record does not contain any other impairment rating reports that conforms to the A.M.A., *Guides* and demonstrates greater impairment.

Appellant contends on appeal that he was entitled to a larger schedule award because his injury worsened. The medical evidence of record, however, did not adequately establish that he sustained more than two percent permanent impairment of the right lower extremity. Appellant may request an 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 did not sustain more than two percent permanent impairment of the right lower extremity. The award is modified to clarify the typographical errors noted earlier in this opinion.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2011 decision of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: December 27, 2012
Washington, DC

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

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

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

¹² See *R.A.*, Docket No. 09-2134 (issued August 3, 2010) (“[An examining] physician should clearly address the principles of the A.M.A., *Guides* in explaining how an impairment is reached. Absent such explanation, [OWCP] may rely on the opinion of its medical adviser.”).