United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 12-1165**
	)	**Issued: December 13, 2012**
U.S. POSTAL SERVICE, POST OFFICE, San Antonio, TX, Employer	)	

Appearances:
Appellant, pro se
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 April 27, 2012 appellant filed a timely appeal from a November 2, 2011 merit decision of the Office of Workers' Compensation Programs. 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 case.

ISSUE

The issue is whether appellant has more than three percent permanent impairment of the right lower extremity for which he received a schedule award.

FACTUAL HISTORY

On March 19, 2009 appellant, then a 42-year-old letter carrier, injured his right ankle, foot and knee when he stepped on a loose rock while delivering mail. OWCP accepted the claim for right foot sprain, sprain of the lateral collateral ligament of the right knee, congenital genu

[1] 5 U.S.C. §§ 8101-8193.

recurvatum of the right knee and medial meniscus tear of the right knee. It authorized a January 8, 2010 right partial medial meniscectomy. Appellant worked intermittently thereafter.

A March 11, 2010 magnetic resonance imaging (MRI) scan of the right knee revealed moderate chondromalacia patella and mild cartilage thinning throughout the medial compartment and interval healing of the meniscocapsular injury of the posterior horn of the medial meniscus. On July 14, 2010 appellant came under the treatment of Dr. James A. Ghadially, a Board-certified orthopedist, for status post right knee arthroscopy, right ankle and knee pain. Dr. Ghadially diagnosed status post arthroscopy with crepitus and degenerative changes and right knee and right ankle internal derangement synovitis due to tendon injury and talar dome injury. An August 10, 2010 MRI scan of the right knee revealed severe medial patellofemoral joint arthrosis and focal chondral defect in weight bearing surface of the medial femoral condyle and small edge free tear of the posterior horn of the lateral meniscus.[2] On September 29, 2010 Dr. Ghadially performed an authorized right medial meniscectomy of the right knee and also a debridement of the right tibiotalor joint.

On June 11, 2011 appellant claimed a schedule award and submitted an April 18, 2011 report from Dr. Helo Chen, an osteopath, who provided an impairment rating under the sixth edition of the A.M.A., *Guides*.[3] He complained of constant right knee pain, weakness, give-away with popping, clicking and grinding. Appellant wore a knee brace daily, had pain performing work duties and could no longer kneel, squat, run or participate in sports. Right knee examination revealed edema, tenderness along the medial and lateral joint line, decreased range of motion in flexion and extension, joint crepitus and quadriceps muscle atrophy with decreased strength. The right ankle and foot showed decreased range of motion, minimal edema along the lateral malleolus, tenderness along the right tibiotalar joint and along the right medial malleolus. Drawer testing revealed grade 1 instability with strength decreased throughout the right ankle invertors and plantarflexors. Dr. Chen diagnosed right foot sprain, right lateral collateral ligament sprain, congenital genu recurvatum on the right and right tear of the medial meniscus.

Dr. Chen advised that, under Chapter 16 of the sixth edition of the A.M.A., *Guides,* appellant had 16 percent total impairment of the right leg. Under Table 16-3, page 509, Knee Regional Grid, Arthritis: Patellofemoral arthritis, appellant was class 1, with a two millimeter cartilage interval with a mid-range default impairment of 10 percent. Applying the net adjustment formula at pages 521-22 of the A.M.A., *Guides*, Dr. Chen found that for Functional History (GMFH) appellant had a grade 2 modifier for antalgic limp, moderate deficit, difficulty walking up and down stairs; for Physical Examination (GMPE), appellant was a grade 1 pursuant to Table 16-7, for a mild problem, grade 1 Lachman's test and muscle atrophy; and Clinical Studies (GMCS) were used to determine the class and not applicable. The net adjustment formula yielded a net adjustment of +1 which resulted in 12 percent right leg impairment for right knee arthrosis.

[2] On January 20, 2011 OWCP advised appellant that he had been reemployed as a modified city carrier with wages of $801.00 a week, effective January 5, 2011, as appellant's compensation would be reduced effective January 5, 2011 based on his actual earnings in this position.

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

For the right ankle, muscle/tendon: strain and tendinitis or history of ruptured tendon, Dr. Chen advised that in accordance with Chapter 16 of the A.M.A., *Guides* appellant had five percent impairment of the right leg. Under Table 16-2, Foot and Ankle Regional Grid, appellant had a class 1 strain and tendinitis or history of ruptured tendon, mild motion deficit with a mid-range default value which yielded a grade C default impairment of five percent pursuant to Table 16-2, page 501 of the A.M.A., *Guides*. Applying the net adjustment formula at pages 521-22 of the A.M.A., *Guides*, Dr. Chen found that a functional history grade modifier should not be applied; the grade for physical examination at Table 16-7 was one, for mild palpatory findings consistently documented with mild decrease in range of motion; and a modifier for clinical studies was not applicable as they were used to determine class. He utilized the net adjustment formula to find a net adjustment of zero which resulted in the default five percent right leg impairment. Dr. Chen opined that the total combined right lower extremity impairment was 16 percent.

In a June 30, 2011 report, OWCP's medical adviser disagreed with Dr. Chen's findings. He indicated that Dr. Ghadially's right knee arthroscopic operative report of September 29, 2010 noted the patellofemoral joint was normal in addition to the March 11, 2010 MRI scan of the right knee which showed only moderate chondromalacia present. The medical adviser opined that he was unable to find adequate evidence to support Dr. Chen's use of the knee grid for patellofemoral arthritis with a two millimeter cartilage interval especially in light of the lack of specific radiographs of the knee at or near the time of the evaluation. He recommended that appellant be referred to a second opinion physician for an impairment determination.

On July 18, 2011 OWCP referred appellant to Dr. Sofia M. Weigel, a Board-certified orthopedist, for a second opinion. In an August 15, 2011 report, Dr. Weigel noted that right ankle examination revealed no erythema, no effusion, swelling or warmth and normal range of motion with mild pain over the posterior tendon. The right knee had good active range of motion, stable anterior/posterior/varus and valgus stresses, no effusion, swelling, warmth or erythema, no crepitus noted, no pain over the medial or lateral joint lines or anserine bursa, mild medial joint pain and minimal anterior knee pain. Maximum medical improvement occurred on April 18, 2011.

Dr. Weigel advised that in accordance with Chapter 16 of the sixth edition of the A.M.A., *Guides* appellant had a total three percent impairment of the right leg. She noted that, under Table 16-3, Knee Regional Grid, appellant had a class 1 right knee, meniscal injury, partial medial meniscectomy, which yielded a grade C default impairment of two percent at Table 16-3, page 509 of the A.M.A., *Guides*. Dr. Weigel applied grade modifiers, finding that the grade for functional history, pursuant to Table 16-6, was one (for consistent report of an antalgic limp while performing daily activities/working) for a mild problem; the grade for physical examination at Table 16-7 was one, for a mild problem (minimal palpatory findings without observed abnormality); and the grade for clinical studies pursuant to Table 16-8 was two (GMCS confirm diagnoses, moderate pathology). She utilized the net adjustment formula of (GMFH - diagnosed condition (CDX)) + (GMPE - CDX) + (GMCS - CDX) or (1-1) + (1-1) + (2-1) to find a net adjustment of +1 which yielded two percent right leg impairment based on a meniscal injury to the right knee.

For the right ankle, Dr. Weigel advised that in accordance with Chapter 16 of the sixth edition of the A.M.A., *Guides* appellant had one percent right leg impairment. Under Table 16-2, Foot and Ankle Regional Grid, appellant had a class 1 right ankle sprain without a torn ligament, posterior tibial tendon tendinitis and normal range of motion, which yielded a default grade C impairment of one percent pursuant to Table 16-2, page 501 of the A.M.A., *Guides*. Applying grade modifiers, Dr. Weigel found grade one at Table 16-6 for functional history (for antalgic limp with work) for a mild problem; the grade one for physical examination at Table 16-7, for a moderate problem (palpatory findings consistent with injury without observe abnormality); and grade one at Table 16-8 for clinical studies. He utilized the net adjustment formula to find a net adjustment of zero which resulted in the default one percent right leg under the sixth edition of the A.M.A., *Guides* for right ankle sprain. Dr. Weigel opined that the total combined right lower extremity impairment was three percent.

In a September 8, 2011 report, OWCP's medical adviser reviewed the medical record and concurred Dr. Weigel's findings. He indicated that Dr. Weigel properly applied the sixth edition of the A.M.A., *Guides* to find three percent right lower extremity impairment.

On November 2, 2011 appellant was granted a schedule award for three percent impairment of the right leg. The period of the award was April 18 to June 17, 2011.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing federal regulations[5] 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.[6] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7] For decisions issued beginning May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[8]

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).[9] Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment class for the CDX, which is then adjusted by grade modifiers based on

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.* at § 10.404(a).

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

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

[9] A.M.A., *Guides*, 3, section 1.3, ICF: A Contemporary Model of Disablement.

functional history, physical examination and clinical studies.[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11] The grade modifiers are used on the net adjustment formula described above to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down the default value C, by the calculated net adjustment.[12]

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 OWCP's medical consultant providing rationale for the percentage of impairment specified.[13]

ANALYSIS

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.[14] Appellant's accepted conditions include right foot sprain and right knee medial meniscus tear. On November 2, 2011 he was granted a schedule award for three percent permanent impairment of the right lower extremity using the sixth edition of the A.M.A., *Guides*. The section of the A.M.A., *Guides* which rates diagnosis-based impairments for the lower extremities is located at Chapter 16, which states at page 497, section 16.2a that impairments are defined by class and grade.

The Board has carefully reviewed Dr. Chen's report of April 18, 2011 and notes that he did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.[15] Dr. Chen opined that appellant had 16 percent impairment of the right leg. He explained that, for patellofemoral arthritis, appellant had impairment for a two millimeter cartilage interval with a default impairment value of 10 percent at Table 16-3, page 509 of the A.M.A., *Guides*. However, the Board notes that Dr. Ghadially's right knee arthroscopic operative report of September 29, 2010 noted the patellofemoral joint was normal. In addition, the MRI scan of the right knee performed on March 11, 2010 showed only moderate chondromalacia present. The Board notes that there was no evidence to support Dr. Chen's use of the knee grid for patellofemoral arthritis with a two millimeter cartilage interval. For the right ankle, Dr. Chen noted that, under Table 16-2, Foot and Ankle Regional Grid, Strain, tendinitis or history of ruptured tendon, appellant had five percent impairment of the right lower extremity. However, the Board notes that Dr. Ghadially's September 29, 2010 operative report noted internal derangement of the right ankle with synovitis but did not note a ruptured tendon and

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

[11] *Id.* at 521.

[12] *Id.* at 497.

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

[14] *Supra* notes 10, 11.

[15] *See Tonya R. Bell*, 43 ECAB 845, 849 (1992).

appellant's claim was accepted for right ankle strain. Therefore the Board finds that Dr. Chen did not properly follow the A.M.A., *Guides*, and an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed.[16]

OWCP referred appellant for a second opinion to Dr. Weigel, who issued an August 15, 2011 report. Using the formula above and the net adjustment formula outlined at pages 516-18 and 521-22 of the A.M.A., *Guides*, Dr. Weigel properly found that, in accordance with Table 16-3, Knee Regional Grid,[17] appellant's impairing diagnosis was a right knee meniscus injury, partial medial meniscectomy, which she rated as class 1, equal to a two percent lower extremity impairment. She applied the modifiers for functional history, physical examination and clinical studies found in Table 16-6, Table 16-7 and Table 16-8.[18] Dr. Weigel rated a functional history modifier of one, a physical examination modifier of one and a modifier of two for clinical studies. She applied the net adjustment formula to rate two percent right lower impairment under the sixth edition of the A.M.A., *Guides*.[19] For the right ankle, in accordance with Table 16-2, Foot and Ankle Regional Grid,[20] appellant's impairing diagnosis was a right ankle sprain, posterior tibial tendon tendinitis, which she rated as class 1, equal to one percent lower extremity impairment. Dr. Weigel applied the modifiers for functional history, physical examination and clinical studies found in Table 16-6, Table 16-7 and Table 16-8.[21] She rated a functional history modifier of one, a physical examination modifier of one and a modifier of one for clinical studies. Dr. Weigel applied the net adjustment formula to rate one percent right lower impairment under the sixth edition of the A.M.A., *Guides*.[22] She noted a total combined lower extremity impairment of three percent.

Dr. Weigel properly explained her calculations under the sixth edition of the A.M.A., *Guides*. OWCP's medical adviser, agreed with her analysis. The Board finds that the weight of medical evidence establishes a three percent permanent impairment of appellant's right lower extremity. This rating was based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides.* The Board finds that, under the circumstances of this case, the weight of the medical evidence establishes that appellant has three percent permanent impairment of the right lower extremity. There is no evidence in accordance with the A.M.A., *Guides* which supports that he sustained a higher impairment.

[16] *See Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

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

[18] *Id*. at 516-19.

[19] *Id*.

[20] *Id*. at 501.

[21] *Supra* note 18.

[22] *Id*.

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 three percent impairment of the right lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2011 decision of Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2012
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