United States Department of Labor
Employees' Compensation Appeals Board

B.L., Appellant	)	
and	)	**Docket No. 12-1240**
	)	**Issued: December 18, 2012**
DEPARTMENT OF VETERANS AFFAIRS, EDWARD HINES, JR. VETERANS MEDICAL CENTER, Hines, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 17, 2012 appellant filed a timely appeal from a December 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding his schedule award claim. 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 seven percent impairment of his left leg, for which he received a schedule award.

FACTUAL HISTORY

On November 16, 2010 appellant, then a 55-year-old police officer, filed a traumatic injury claim alleging that on November 10, 2010 he fell against a door frame and injured his left knee at work. He stopped work that day and returned on November 18, 2010. OWCP accepted

[1] 5 U.S.C. §§ 8101-8193.

that claim for rupture of the left quadriceps tendon and paid benefits, including a December 7, 2010 surgical repair.

On September 9, 2011 appellant requested a schedule award.

In a September 13, 2011 letter, appellant and his physician, Dr. Nilamkumar Patel, an internist specializing in cardiovascular disease, were informed of the evidence needed for an impairment determination under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). No response was received from Dr. Patel.

In a September 8, 2011 report, Dr. Craig McAsey, an orthopedic surgeon, noted that appellant completed a work hardening program and a functional capacity evaluation. He stated that appellant reached maximum medical improvement and could return to work at full duty. A June 6, 2011 functional capacity evaluation was submitted. A September 1, 2011 work hardening note discharged appellant from work conditioning.

In an October 28, 2011 report, Dr. Anatoly M. Rozman, a Board-certified physiatrist, stated that, since the December 2010 surgery, appellant had residual weakness and pain in the left knee. The functional capacity evaluation revealed limited range of motion and strength with swelling in the left knee. Dr. Rozman noted that appellant had problems going up and down stairs and overextension of the left knee on standing because of tendon weakness. Under the sixth edition of the A.M.A., *Guides*, he opined that appellant had 27 percent impairment of the left leg. In a lower extremity permanent impairment worksheet dated October 28, 2011, Dr. Rozman provided a primary impairing diagnosis of quadriceps tendon rupture with subsidiary diagnoses of medial and lateral meniscus injury and chondromalacia patella directly related to the primary diagnosis. Under Table 16-3, page 509, he noted that the ruptured tendon diagnosis with mild motion deficits was a class 1 with default grade C. Appellant had a grade 1 modifier for functional history, physical examination and clinical studies. He used the net adjustment formula on page 521 to rate final impairment of seven percent for ruptured tendon with mild motion defects. Under Table 16-3 page 509, for the diagnosis of medial and lateral meniscal injury, Dr. Rozman stated that appellant was class 1 with default grade C of 10 percent impairment. He assigned grade 1 modifiers for functional history, physical examination and clinical studies, using the net adjustment formula. Dr. Rozman rated a final impairment of 10 percent for medial and lateral meniscal injury. For the diagnosis of chondromalacia patella, under Table 16-3, page 511, he stated that appellant was class 1 with default grade C of 10 percent. Dr. Rozman assigned grade 1 modifiers for functional history, physical examination and clinical studies, using the net adjustment formula. He rated final impairment 10 percent for chondromalacia patella. Dr. Rozman stated that the combined left lower extremity impairments was 27 percent. He found that maximum medical improvement was October 21, 2011.

On November 27, 2011 an OWCP medical adviser reviewed the medical evidence, including Dr. Rozman's October 28, 2011 report. The medical adviser concurred with Dr. Rozman that, under Table 16-3, page 509 of the A.M.A., *Guides*, a ruptured tendon with mild motion deficits was a class 1 diagnosis with default grade C rating of seven percent. Using the net adjustment formula on page 521, the medical adviser agreed that appellant had grade 1 modifier for antalgic limp and grade 1 modifier for physical examination, for a net adjustment of

zero. Therefore, appellant had final impairment of seven percent for ruptured tendon with mild motion deficits. The medical adviser stated that Dr. Rozman had added ratings for meniscal injuries and chondromalacia of the patella to appellant's diagnoses, which were not accepted diagnoses. Maximum medical improvement was noted as the date appellant was released to full-duty work, September 1, 2011.

By decision dated December 16, 2011, OWCP granted appellant a schedule award for seven percent impairment to the left lower extremity. The award covered a period of 20.16 weeks from September 2, 2011 to January 14, 2012. Determinative weight was accorded to the medical adviser's opinion.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and its implementing federal regulations[3] 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, it 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.[4] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used.[5]

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.[6]

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 percentage of impairment using the A.M.A., *Guides.*[7]

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id.* at § 10.404(a).

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

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

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

ANALYSIS

OWCP accepted appellant's claim for and paid appropriate benefits, including the December 3, 2010 surgical repair of the left quadriceps tendon. By decision dated December 16, 2011, it granted him a schedule award for seven percent permanent impairment of the left lower extremity using the applicable table of the sixth edition of the A.M.A., *Guides*. The Board finds that appellant has not met his burden of proof to establish that he has impairment of his left lower extremity greater than the seven percent awarded.

In an October 28, 2011 report and permanent impairment worksheet, Dr. Rozman evaluated appellant's impairment under Table 16-3 of the A.M.A., *Guides* and opined that, for the diagnoses of quadriceps tendon rupture, medial and lateral meniscus injury, and chondromalacia patella appellant had 27 percent left lower extremity impairment. For the quadriceps tendon rupture, he advised that appellant had a default impairment rating of seven percent to the left lower extremity and, after applying grade modifiers to the net adjustment formula, there was no adjustment to the default rating of seven percent impairment. For both the diagnoses of medial and lateral meniscus injury and chondromalacia patella, Dr. Rozman advised that appellant had 10 percent impairment each to the left lower extremity and, after applying grade modifiers to the net adjustment formula, there was no adjustment to the default rating of 10 percent impairment. OWCP's medical adviser reviewed Dr. Rozman's report and agreed with the impairment rating of seven percent for quadriceps tendon rupture, but found that the impairment of 10 percent each for the medial and lateral meniscus injury and chondromalacia patella were not part of appellant's accepted diagnoses and, thus, could not be included in the impairment award.

As noted, the A.M.A., *Guides* classifies the lower extremity impairment by diagnosis, which is then adjusted by grade modifiers.[8] In this case, based on a review of Dr. Rozman's examination findings, the medical adviser applied Table 16-3 and assigned a CDX of 1 with a default grade of C for left quadriceps tendon rupture with mild motion deficits. He then selected a grade modifier value of 1 for both GMFH and GMPE, citing appellant's antalgic limp and physical examination. As the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) or (1-1) + (1-1), yielded 0, the medical adviser found that modification of the default grade was unnecessary and established that appellant sustained seven percent permanent impairment of the left lower extremity. The Board finds that the medical adviser properly applied the standards of the A.M.A., *Guides* to reach his conclusion that appellant sustained a seven percent permanent impairment to the left lower extremity based on the diagnosis of left quadriceps tendon rupture with mild motion deficits.

The Board further finds that appellant is not entitled to a schedule award for the conditions of meniscal injuries and chondromalacia of the patella. There is no indication that those are accepted conditions or preexisted the accepted injury. Conditions which preexist the employment injury would be considered in evaluating whether there is any permanent

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

impairment as a result of the accepted conditions of rupture of the left quadriceps tendon.[9] However, there is no indication that the meniscal injuries and chondromalacia of the patella preexisted the accepted injury.[10]

There is no other medical evidence, in conformance with the A.M.A., *Guides*, supporting a greater percentage of impairment.

Accordingly, the Board finds that the medical adviser correctly applied the A.M.A., *Guides* to find that appellant had seven percent permanent impairment of the left lower extremity, for which he received a schedule award. Appellant has not submitted sufficient evidence to establish that he has more than seven percent impairment to the lower left extremity.

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 not established that he has more than seven percent permanent impairment of the left lower extremity, for which he received a schedule award.

[9] When assessing the percentage of impairment of those conditions accepted by OWCP as job related, any preexisting permanent impairment of the same member is included. *See K.H.,* Docket No. 09-341 (issued December 30, 2009).

[10] Furthermore, the A.M.A., *Guides*, provide that in most cases only one diagnosis in a region will be appropriate for calculating impairment. The A.M.A., *Guides* note that, if a patient has two significant diagnoses, the examiner should use the diagnosis with the highest impairment rating in that region that is causally related. Here, the only diagnosis that is accepted as causally related is the ruptured tendon. *See* A.M.A., *Guides* 497.

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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