United States Department of Labor
Employees' Compensation Appeals Board

DONNA LINZE-CAYWOOD, Appellant	)	
and	)	**Docket No. 04-950**
	)	**Issued: August 25, 2004**
DEPARTMENT OF COMMERCE, CENSUS BUREAU, Marion, IL, Employer	)	

Appearances:
Jack A. Strellis, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 1, 2004 appellant, through her attorney, filed a timely appeal from the December 2, 2003 merit decision of the Office of Workers' Compensation Programs, granting her a schedule award for a 46 percent permanent impairment to her left lower extremity. Pursuant to 5 U.S.C. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit schedule award decision in this case.

ISSUE

The issue is whether appellant has more than a 46 percent permanent impairment to her left lower extremity for which she received a schedule award.

FACTUAL HISTORY

On March 28, 2000 appellant, then a 41-year-old census enumerator, filed a traumatic injury claim for injuries to her left knee and ankle, back and left shoulder that she alleged occurred on March 22, 2000 during the performance of her federal duties. The Office accepted the conditions of a left knee contusion/sprain, left ankle sprain and left knee meniscus tear and

paid appropriate benefits. On July 6, 2000 appellant underwent an authorized left knee arthroscopy. She did not return to work. On July 22, 2002 the Office referred appellant to vocational rehabilitation.

On April 15, 2002 appellant filed a Form CA-7 claim for a schedule award.

In a July 18, 2002 report, Dr. Harmeen Chawla, Board-certified in physical medicine and rehabilitation, stated that appellant had developed left leg reflex sympathetic dystrophy (RSD) secondary to her work injury as a census person on March 22, 2000. He noted that she was last seen on December 11, 2001 and that he had opined that she had reached maximum medical improvement at that time. Dr. Chawla advised that appellant still had some hypersensitivity and pain in the leg. The physical examination revealed that the left leg was quite mottled and lower in temperature than the right leg. There was some slight swelling and hypersensitivity to touch. Range of motion of the left knee was 5 degrees to 90 degrees, with no notable atrophy. Strength was 5/5 proximally, 4/5 at the knee secondary to pain and 5/5 at the ankle dorsiflexors. Reflexes were +2. Dr. Chawla opined that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a 50 percent rate of impairment to her left lower extremity because of severe pain and limitations of the left leg.

On October 25, 2002 the Office requested that its Office medical adviser review appellant's medical file for a permanent impairment determination. In an October 28, 2002 report, the Office medical adviser noted that postoperatively, appellant had developed RSD which had necessitated sympathetic blocks as well as a left lumbar paravertebral sympathetic rhizolysis, a Tens unit, medication and other pain clinic modalities. The Office medical adviser further noted that her medical record revealed continued complaints of hypersensitivity in the left leg as well as pain which had limited her activities. Physical examinations did not demonstrate weakness or atrophy of the left lower extremity. The left leg was quite mottled when compared to the right leg with slight swelling in the left knee and leg. Under Tables 17-37 and 16-10 of the A.M.A., *Guides*, fifth edition, the Office medical adviser awarded a 35 percent left lower extremity impairment for a Grade 1 dyesthesias in the distribution of the femoral, lateral femoral cutaneous, peroneal, superficial peroneal and sciatic nerves. For the range of knee motion, the Office medial adviser utilized Table 17-10 to find that flexion of 90 degrees equated to a 10 percent impairment and extension of 5 degrees equated to a 5 percent impairment. Under Table 17-33, the Office medical adviser also found two percent impairment for a partial lateral meniscectomy. Utilizing the Combined Values Chart on page 604 of the A.M.A., *Guides*, the Office medical adviser assigned a 46 percent impairment rating for the left lower extremity with a date of maximum medical improvement of December 11, 2001.

In an October 28, 2003 report, Dr. Chawla reiterated that appellant had reached maximum medical improvement on December 11, 2001. The physical examination revealed that the left leg was slightly mottled with some slight swelling. Hypersensitivity over the left hip area was noted and the SI joints were intact. Strength was 5/5 and reflexes were +2. Dr. Chawla assessed RSD of the left lower extremity and history of low back pain and SI joint dysfunction.

By decision dated December 2, 2003, the Office issued a schedule award for a 46 percent impairment to the left lower extremity. The period of the award was from December 11, 2001 to June 25, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing federal regulation[2] 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, 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[3]

ANALYSIS

In his July 18, 2002 report, Dr. Chawla opined that appellant had 50 percent impairment to her left lower extremity because of severe pain and limitations of the left leg. Although he stated that he applied the A.M.A., *Guides* in determining that she had 50 percent impairment, Dr. Chawla did not identify any tables, figures or otherwise explain how he applied the A.M.A., *Guides* in reaching his conclusion. In cases where an attending physician's report gives an estimate of permanent impairment, but does not indicate how the estimate is based on the application of the A.M.A., *Guides*, it is appropriate for an Office medical adviser to review the clinical findings of the attending physician to determine the permanent impairment.[4]

The Office medical adviser reviewed appellant's medical record and applied the clinical findings to specific tables under the fifth edition of the A.M.A., *Guides.* In his October 28, 2002 report, the Office medical adviser identified Table 16-10[5] and Table 17-37[6] in assigning a 35 percent left lower extremity impairment for a Grade 1 dysesthesia in the distribution of the femoral, lateral femoral cutaneous, peroneal, superficial peroneal and sciatic nerves. The lower extremity impairment values from Table 17-37 for dysesthesia results in a 7 percent impairment of the femoral nerve, a 7 percent impairment of the lateral femoral cutaneous nerve, a 5 percent impairment of the common peroneal nerve, a 5 percent impairment of the superficial peroneal nerve and a 12 percent impairment of the sciatic nerve which equates to a total of a 36 percent impairment due to dysesthesia.[7] Since the Office medical adviser had assigned a Grade 1 or an 81 to 99 percent sensory deficit of the individual muscle groups according to the classification given in Table 16-10,[8] under section 17.2l at page 552, the maximum impairment value of the dysesthesia or 99 percent is multiplied by the percent deficit or 36 which equals 35.64 percent,

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] *Id*.

[4] *See generally Charles A. Sciulli*, 50 ECAB 488 (1999).

[5] A.M.A., *Guides* at 482, Table 16-10.

[6] *Id*. at 552, Table 17-37.

[7] *Id.*

[8] *Id.* at 482, Table 16-10.

which is rounded to a 36 percent lower extremity impairment.[9] Under Table 17-10, a flexion of 90 degrees and a flexion contracture (extension) of 5 degrees each equates to a 10 percent or mild lower extremity impairment of the knee which results in a total impairment value of 20 percent.[10] Under Table 17-33, a partial lateral meniscectomy equates to two percent lower extremity impairment.[11]

However, pursuant to Table 17-2, the Board notes that the impairment value for the meniscectomy, a diagnostic based estimate, may not be combined with a range of motion impairment.[12] The Board notes that the Office medical adviser did not explain the precise impairment values he had combined to arrive at his 46 percent impairment conclusion and, as noted above, there appear to be several mistakes in his calculations. Section 17.2, page 526, provide that the evaluation method which results in the highest rating will be adopted.[13] Utilizing the Combined Values Chart, 36 percent nerve deficit and 20 percent range of motion deficit equates to a 49 percent total impairment. Conversely, 36 percent nerve deficit combined with 2 percent impairment from the partial lateral meniscectomy equates to a 37 percent total impairment.[14] Thus, as utilizing different evaluation methods yields results which differed from that of the Office medical adviser, this case must be remanded for the Office medical adviser to explain what evaluation method was used and to recalculate the impairment rating. After such further development as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for a decision on whether appellant has established more than a 46 percent permanent impairment to her left lower extremity.

[9] The Board notes that the Office medical adviser mistakenly calculated that there was a 35 percent lower extremity impairment due to Grade 1 dysesthesia.

[10] A.M.A., *Guides* at 537, Table 17-10. *See also* A.M.A., *Guides* page 533, section 17.2f. The Board notes that the Office medical adviser mistakenly advised that an extension of 5 degrees equated to a 5 percent impairment.

[11] *Id.* at 546, Table 17-33.

[12] *Id.* at 526, Table 17-2.

[13] *Id.*

[14] *Id.* at 604, Combined Values Chart.

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision.

Issued: August 25, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member