United States Department of Labor
Employees' Compensation Appeals Board

MONICA M. TOWNSEND, Appellant	)	
and	)	**Docket No. 04-37**
	)	**Issued: January 15, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Sturtevant, WI, Employer	)	

Appearances:
Monica M. Townsend, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 26, 2003 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated August 19, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment to her right leg. On appeal, appellant argues that the medical evidence establishes a 25 percent permanent impairment.

FACTUAL HISTORY

On November 20, 2000 appellant, then a 48-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). On the claim form, appellant alleged that she sustained a right knee injury in the performance of duty on November 18, 2000, when she slipped and fell on her right knee. After submission of medical evidence, the Office accepted the claim for tears of the right medial and lateral menisci.

Appellant underwent arthroscopic partial medial and lateral meniscectomies on January 4, 2001. In a report dated May 25, 2001, the attending orthopedic surgeon, Dr. John Trotter, reported that appellant had a loss of five degrees of knee extension, with full flexion. Dr. Trotter opined on October 11, 2001 that appellant had a 10 percent permanent impairment.[1] In a report dated January 11, 2002, an Office medical adviser reviewed the medical evidence of record and opined that appellant had a 10 percent permanent impairment to the right leg. The medical adviser noted that appellant had a loss of five degrees of knee extension range of motion; according to Table 17-10 of the A.M.A., *Guides*, 5 degrees of flexion contracture is a 10 percent lower extremity impairment. The medical adviser also noted that a diagnosis-based estimate of permanent impairment for the partial lateral and medial meniscectomies would also result in a 10 percent impairment under Table 17-33. The A.M.A., *Guides*, however, instruct the evaluator not to use both methods but to choose the one method that provides the most clinically accurate impairment rating.[2] The Office medical adviser concluded that in this case both methods resulted in a 10 percent permanent impairment to the right leg.

In a decision dated January 23, 2002, the Office issued a schedule award for a 10 percent permanent impairment to the right leg. The period of the award was 28.8 weeks from May 26, 2001.

On February 13, 2002 appellant underwent additional surgery on her right knee. In a report of that date, the attending surgeon, Dr. Donald Zoltan, indicated that an anterior cruciate ligament reconstruction was performed, as well as a partial lateral meniscectomy. Dr. Zoltan continued to treat appellant's right knee and submitted periodic reports.

In a letter dated January 28, 2003, the Office noted that impairment ratings were based on the A.M.A., *Guides*, and requested that appellant provide the enclosed forms to her physician for a proper report as to the degree of permanent impairment in the right knee. Dr. Zoltan did not provide the specific information requested on the forms; he referred to a report dated February 4, 2003. In this report, Dr. Zoltan provided results on examination, noting "good" range of motion, no knee effusion, and "Lachman's [test] and anterior drawer are negative." Dr. Zoltan further stated, "Permanent impairment has resulted in her right knee as a result of the work-related injury. She has required anterior cruciate ligament reconstruction. There is also significant injury to the articular cartilage of the medial and lateral femoral condyles of the knee and the patella. This has a likelihood of progressing to post-traumatic significant osteoarthritis. Based on the above, based on functional loss, based on persistent limitations in the knee and based on medical probability, there is a 25 percent permanent disability compared to an amputation at the knee."

By report dated March 13, 2003, Dr. Zoltan reported that appellant lacked five degrees of full extension in the knee; he again reported negative Lachman's test and anterior drawer. In an April 10, 2003 report, Dr. Zoltan provided results on examination without discussing range of motion.

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[1] Dr. Trotter provided his opinion on a copy of Figure 17-10 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), although he did not actually complete the worksheet.

[2] *See* A.M.A., *Guides*, 526, Table 17-2.

The Office referred medical records to another Office medical adviser for review. In a report dated April 28, 2003, the medical adviser noted the physical findings, including good range of motion and a lack of knee effusion. The medical adviser opined that appellant had a 10 percent permanent impairment to the right leg, pursuant to Table 17-33, for partial medial and lateral meniscectomies. The medical adviser noted that under Table 17-33 additional impairment may be found for residual cruciate laxity, but given the physical findings such as negative anterior drawer and Lachman's, no additional impairment was appropriate.

By decision dated August 19, 2003, the Office issued a schedule award for a 10 percent permanent impairment to the right leg. The period of the award was 28.8 weeks commencing February 13, 2003. The Office did not refer to the prior schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[3] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[4]

ANALYSIS

The Board notes that the Office has issued two schedule award decisions in this case, a January 23, 2002 award for 10 percent to the right leg and an August 19, 2003 award for 10 percent, totaling 20 percent. Since the August 19, 2003 decision on appeal was based on a report from an Office medical adviser finding that appellant had a 10 percent impairment to the right leg, the Board will review the evidence to determine if the Office properly relied upon the Office medical adviser's report in determining the degree of permanent impairment.

Appellant's attending physician, Dr. Zoltan, provided an opinion in his February 4, 2003 report that appellant had a 25 percent impairment. On appeal, appellant urges the Board to direct the Office to accept the 25 percent figure. Dr. Zoltan, however, failed to explain how he calculated the 25 percent permanent impairment under the A.M.A., *Guides.* He did not complete the form report provided, nor did he refer to any specific tables or figures in support of his calculation. On the other hand, the Office medical adviser does explain how the A.M.A., *Guides* were applied. The medial adviser applied Table 17-33, which provides a 10 percent permanent impairment for partial lateral and medial meniscectomies.[5] Although appellant underwent additional anterior cruciate surgery, and Table 17-33 does provide for additional impairment due

[3] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[4] *A. George Lampo*, 45 ECAB 441 (1994).

[5] A.M.A., *Guides*, 546, Table 17-33.

to cruciate ligament laxity,[6] the medical adviser explained that he would not award any additional impairment. He noted the results on physical examination, including negative Lachman's and anterior drawer, and found no additional impairment was appropriate. The medical adviser thus provided a reasoned opinion on the degree of permanent impairment, while Dr. Zoltan did not explain how his impairment rating was calculated under the A.M.A., *Guides.* The weight of the current medical evidence of record rests with the Office medical adviser.

The Board notes that Dr. Zoltan's reports had briefly stated that appellant had "good" range of motion, but his March 13, 2003 report indicated five degrees lack of knee extension. As the factual history notes, the January 23, 2002 schedule award was based on medical evidence that included a five-degree lack of extension. The initial medical adviser indicated that, under Table 17-10, this was also a 10 percent impairment.[7] The A.M.A., *Guides*, however, prohibit combining both range of motion and diagnosis-based (Table 17-33) impairments.[8] Accordingly, using the range of motion provided in the March 13, 2003 report under Table 17-10 would not result in a greater than 10 percent permanent impairment.

CONCLUSION

The Board finds that the Office properly determined that the probative medical evidence of record established a 10 percent permanent impairment to the right leg.

[6] *Id.;* the table provides a 7 percent leg impairment for mild cruciate ligament laxity, 17 percent for moderate laxity and 25 percent for severe laxity.

[7] *Id.* at 537, Table 17-10.

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 19, 2003 is affirmed.

Issued: January 15, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member