United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 07-1368**
	)	**Issued: November 17, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Merrifield,VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 25, 2007 appellant filed a timely appeal from the March 13, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed a June 19, 2006 decision denying her schedule award claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that she sustained permanent impairment of her left knee.

FACTUAL HISTORY

On April 19, 2000 appellant, then a 34-year-old letter carrier, sustained injury to her left knee when it was struck by a mailbox which fell from a post. On September 14, 2000 the Office accepted left knee traumatic chondromalacia of the patella with traumatic synovitis and right

knee superficial abrasions.[1] Left knee arthroscopic surgery was authorized and performed on October 12, 2000.[2] On March 16, 2002 appellant filed for a schedule award.

On August 15, 2005 Dr. Rida N. Azer, an attending Board-certified orthopedic surgeon, found no left knee effusion and noted occasional left knee pain. A physical examination revealed some crepitus with knee flexion and extension and on patellofemoral compression. Dr. Azer reviewed an x-ray which showed narrowing of the medial joint space and no loose bodies. He reviewed appellant's records and concluded that she had residuals of her accepted injury which caused traumatic arthritis and permanent limitations.

On December 16, 2005 the Office received an undated impairment rating from Dr. Hampton J. Jackson, Jr., an attending Board-certified orthopedic surgeon and associate of Dr. Azer. Dr. Jackson diagnosed left knee traumatic arthritis secondary to traumatic chondromalacia due to the April 19, 2000 injury. He determined that appellant had 69 percent impairment of the left lower extremity. Dr. Jackson reported that appellant had an antalgic gait with a limp and a distorted gait. He rated impairment due to pain based on Table 18-5, page 580 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), noting a 3+ score for global pain behavior. Using Tables 18-4, pages 576-77, 18-5, page 580, and 18-6 page 584, Dr. Jackson advised that appellant's total pain-related impairment score was 46.41 which placed her in the second highest pain-related impairment class under Table 18-7. On physical examination, he noted left thigh atrophy, which was less obvious in the calf. Appellant's right thigh measured 68 centimeters (cm.) while her left thigh measured 64 cm. or greater than 3 cm. atrophy. Using Table 17-6, page 530 he rated 30 percent impairment of the lower extremity due to her thigh atrophy and 3 percent impairment to the left calf. Dr. Jackson rated weakness by noting that appellant had Grade 4 extension weakness under Table 17-8, page 532, which constituted 12 percent impairment. He also rated 10 percent impairment to the left lower extremity due to arthritis based on her radiologically determined cartilage interval under Table 17-31.

On March 9, 2006 Dr. Willie B. Thompson, an Office medical adviser, recommended a second opinion examination. He noted that the impairment rating provided by Dr. Jackson did not conform to the protocols of the A.M.A., *Guides* such that it was inflated. Dr. Thompson noted that appellant had chondromalacia of the patella which was simply a softening of the articular cartilage on the undersurface of the knee cap.

On April 11, 2006 the Office referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for an opinion as to whether she sustained any left leg impairment due to her April 19, 2000 employment injury.

In an April 28, 2006 report, Dr. Smith reviewed appellant's history of injury and medical treatment, including arthroscopic surgery by Dr. Azer who found erosion of the medial and

[1] By decision dated August 29, 2003, the Office denied appellant's claim that her back condition was due to the April 19, 2000 employment injury. It also denied any further wage-loss compensation effective November 27, 2002 on the grounds that she no longer had any residual disability due to her employment injury.

[2] Appellant resigned from her employment effective November 27, 2002.

lateral tibial condyles and over the femoral surface of the patella. He noted that Dr. Jackson's impairment estimate did not conform to the A.M.A., *Guides*, as the rating combined various impairment methods which were precluded and resulted in an inflated estimate. Dr. Smith provided findings on physical examination, noting that the left knee revealed no deformity or atrophy, no effusion and full range of motion on extension and flexion. He found some mild crepitation in the patella femoral joint which was consistent with the surgical report. Dr. Smith advised that appellant had a five percent impairment of her left knee due to arthritis under the footnote at Table 17-31, page 544. He advised, however, that this impairment was unrelated to the accepted work injury as appellant's initial treating physician had stated on May 11, 2000 that her bursitis and tendinitis had completely recovered before she returned to work. Moreover, appellant reported subsequent incidents in May and July 2000 when her left knee gave way. For this reason, Dr. Smith stated that appellant had no impairment of her left knee related to the April 19, 2000 injury. He determined the date of maximum medical improvement was May 11, 2000.

On May 10, 2006 Dr. Robert H. Wilson, an Office medical adviser, reviewed the medical records. He noted that appellant had been given the diagnosis of traumatic chondromalacia; however, the condition was noted to be degenerative. Dr. Wilson noted that Dr. Jackson's impairment rating was based on thigh and calf atrophy, extensor weakness, pain and arthritis which, under Table 17-2, page 526, could not be combined in a rating of lower extremity impairment. In turn, Dr. Smith had only supported the diagnosis of arthritis.

By decision dated June 19, 2006, the Office denied appellant's claim for a schedule award finding that she had no impairment due to her accepted condition.

On June 23, 2006 appellant requested a hearing before an Office hearing representative, which was held on December 27, 2006. In a December 29, 2006 report, Dr. Azer advised that appellant's left knee revealed crepitus with flexion and extension and patellofemoral compression. He stated that her left knee injury resulted in permanent restrictions and impairment, referring to an attached copy of the impairment rating of Dr. Jackson.

By decision dated March 13, 2007, the Office hearing representative affirmed the denial of appellant's schedule award claim. She noted that the Office medical adviser reviewed the medical evidence and concurred with Dr. Smith's opinion that appellant had no employment-related impairment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] 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 to all claimants,

[3] 5 U.S.C. §§ 8101-8193.

[4] 5 U.S.C. § 8107.

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 regulation as the appropriate standard for evaluating schedule losses.[5] Effective February 1, 2001, the fifth edition of the A.M.A., *Guide*s is used to calculate schedule awards.[6]

In making impairment ratings for the lower extremity, the A.M.A., *Guides* provide a cross-usage chart at Table 17-2 which indicates which methods and resulting impairment ratings may be combined.[7]

ANALYSIS

The Office accepted that appellant sustained injury to her left knee on April 19, 2000 with traumatic chondromalacia and synovitis. The issue is whether she sustained any permanent impairment due to residuals of her accepted condition.

Dr. Jackson, an attending physician and an associate of Dr. Azer, rated appellant's total impairment as 69 percent of the left leg. In making this rating, he combined ratings for pain, atrophy of the thigh and calf, muscle weakness and arthritis. However, as noted by both Office medical advisers and Dr. Smith, this impairment rating departs from the protocols of the A.M.A., *Guides.* Dr. Jackson neglected to address the cross-usage chart at Table 17-2. The cross-usage chart clearly provides that, in rating impairment due to atrophy of the lower extremity, impairment ratings for arthritis, muscle strength, gait derangement, loss of range of motion or pain may not be combined. By doing so, the impairment rating of Dr. Jackson was inflated as it incorporated impairment methods that may not be combined. Moreover, he did not explain how he derived a 30 percent rating for left thigh atrophy as Table 17-6 at page 530 provides a maximum lower extremity impairment of 13 percent for 3+ (severe) thigh atrophy. Dr. Jackson's impairment rating for pain was derived from Chapter 18 of the A.M.A., *Guides*; however, this was error as Chapter 18 clearly provides that examiners should not use "this chapter to rate pain related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the A.M.A., *Guides*."[8] He did not address why a rating for pain, or sensory loss, could not be made under Chapter 17. Based on his inaccurate application of the A.M.A., *Guides*, the impairment rating provided by Dr. Jackson is of diminished probative value.

The Office referred appellant for evaluation by Dr. Smith. In addressing the extent of impairment caused by the April 19, 2000 injury, Dr. Smith advised that appellant noted that appellant exhibited a full range of left knee motion with no instability, deformity or atrophy. The patella femoral joint revealed some mild crepitation which Dr. Smith found consistent with her

[5] 20 C.F.R. § 10.404. *See J.C.*, 58 ECAB ___ (Docket No. 07-1165, issued September 21, 2007); *Thomas O. Bouis*, 57 ECAB 602 (2006).

[6] FECA Bulletin No. 01-05 (issued January 29, 2001); *see E.P.*, 58 ECAB ___ (Docket No. 07-1244, issued September 25, 2007); *Jesse Mendoza*, 54 ECAB 802 (2003).

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

[8] *Id*. at 571, Table 18.3b.

history of surgery. In rating impairment to the knee, Dr. Smith advised that appellant had five percent based on the footnote to Table 17-31 at page 544, which rates arthritis.[9] However, he noted that her impairment was unrelated to the accepted injury as the treatment records of the physician who initially treated her revealed that her condition resolved before her return to work.

The Board finds that the case is not in posture for decision. It is well established that in determining entitlement to a schedule award, preexisting impairment to the scheduled member is to be included.[10] The Office's procedure manual provides that, in evaluating the loss of use of a scheduled member due to an employment injury, the percentage includes both employment-related impairments and any preexisting permanent impairment of the same member or function.[11] Dr. Smith assigned impairment to appellant's knee under Table 17-31 based on arthritis. However, it is not readily apparent why the physician excluded the impairment rating in light of the treatment notes from appellant's initial physician. Neither Dr. Smith nor the Office medical adviser addressed whether the finding of arthritis represented preexisting impairment of the knee, which would be compensable. For this reason, the case will be remanded to the Office for further development and an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision as to the extent of any impairment to appellant's left knee.

[9] Table 17-31 allows five percent lower extremity impairment in an individual with a history of direct trauma to the knee, complaint of patellofemoral pain, and crepitation on physical examination. This rating is allowed without joint space narrowing on x-ray.

[10] *Beatrice L. High*, 57 ECAB 329 (2006); *Michael C. Milner*, 53 ECAB 446 (2002); *Lela M. Shaw*, 51 ECAB 372 (2000).

[11] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (June 2003).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2007 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision.

Issued: November 17, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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