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I.N., Appellant)	
)	
and)	Docket No. 08-2544
)	Issued: June 17, 2009
U.S. POSTAL SERVICE, POST OFFICE,)	
Philadelphia, PA, Employer)	
)	

Case Submitted on the Record

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

On September 24, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 17, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has more than a 31 percent permanent impairment to his left leg and 10 percent to his right leg.

The case was before the Board on two prior appeals. In a decision dated April 16, 2001, the Board affirmed a February 2, 1999 Office decision, denying merit review of the claim.¹ By decision dated February 1, 2008, the Board found a conflict in the medical evidence existed with

¹ Docket No. 99-1375 (issued April 16, 2001).

respect to the degree of permanent impairment in the legs.² The history of the case is provided in the Board's prior decisions and is incorporated herein by reference.

On remand, the Office referred appellant to Dr. Michael Okin, a Board-certified orthopedic surgeon selected as a referee physician. In a report dated August 12, 2008, Dr. Okin provided a history and reviewed medical records. He noted that the attending physiatrist, Dr. George Rodriguez, had provided an impairment based on articular cartilage defect. Dr. Okin stated that loss of articular cartilage under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) is based on x-rays, while Dr. Rodriguez based his opinion on a magnetic resonance imaging (MRI) scan. He provided results on examination and found an essential normal musculoskeletal examination. Dr. Okin opined that appellant did not have any impairment under the A.M.A., *Guides*. He indicated that appellant had full range of motion of the lumbar spine and no neurological deficits. Dr. Okin noted that x-rays of the knees at the time of the injury were normal and he concluded that appellant did not have a ratable impairment under the A.M.A., *Guides*.

In a report dated September 16, 2008, an Office medical adviser reviewed the medical evidence. He stated that there was no ratable impairment for residual effects from bilateral knee contusions.

By decision dated September 17, 2008, the Office found that appellant was not entitled to an additional 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 case was referred to Dr. Okin as a referee physician under 5 U.S.C. § 8123(a) and 20 C.F.R. § 10.321(b), pursuant to the Board's prior decision. Dr. Okin provided results on examination and reviewed the medical evidence. He found that appellant did not have a permanent impairment to the legs under the A.M.A., *Guides*. Dr. Okin noted full range of motion and no neurological deficit. With respect to arthritis impairments for the knee joints,

² Docket No. 07-809 (issued February 1, 2008).

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).

which had been discussed in prior reports, the Board notes that knee arthritis was not an accepted employment-related condition.⁵ No evidence was presented on causal relationship between an arthritis condition or impairment and the employment injury. Moreover, the arthritis impairments under Table 17-31 of the A.M.A., *Guides*, as noted by Dr. Okin, are based on x-ray findings. The heading of the table is “arthritis impairments based on roentgenographically determined cartilage intervals.”⁶ There was no x-ray evidence establishing a cartilage interval impairment under Table 17-31.

It is well established that, when a case is referred to a referee physician for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁷ The Board finds that Dr. Okin’s report represents the weight of the medical evidence in this case. On appeal, appellant appears to argue that Dr. Okin was biased and provided a report insufficient to resolve the conflict. She may disagree with Dr. Okin’s findings, but the referee physician provided a rationalized medical opinion on the issue presented. The medical evidence of record does not establish that an increased schedule award was appropriate in this case.

CONCLUSION

The Board finds the Office properly determined that appellant did not have more than the 31 percent left leg permanent impairment and 10 percent right leg impairment previously awarded.

⁵ The accepted conditions were bilateral knee contusions, cervical and lumbar strains and dysthymic disorder. In his September 16, 2008 report, the Office medical adviser stated that the Office “has accepted” bilateral arthritis and “therefore” there was no ratable permanent impairment. The medical adviser apparently meant to indicate that bilateral arthritis was not an accepted condition and therefore any impairment for arthritis would not be employment related.

⁶ A.M.A., *Guides* 544, Table 17-31. Roentgenography is photography based on x-rays. See Dorland’s *Illustrated Medical Dictionary* (30th ed. 2003). The A.M.A., *Guides* stated that the impairment estimates are based on standard x-rays, with the individual standing, if possible. A.M.A., *Guides* 544.

⁷ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 17, 2008 is affirmed.

Issued: June 17, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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