United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 11-1847**
	)	**Issued: March 22, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Hartford, CT, Employer	)	

Appearances:
Peter J. Zagorsky, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 9, 2011 appellant, through her attorney, filed a timely appeal from March 10 and July 22, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP). 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 this case.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment of the right lower extremity, for which she received a schedule award.

FACTUAL HISTORY

Appellant, then a 47-year-old letter carrier, injured her right knee on July 14, 2006 when she tripped over a parcel of mail and fell to the ground. She filed a claim for benefits, which OWCP accepted for partial tear of the posteromedial meniscus and contusion of the right knee.

[1] 5 U.S.C. § 8101 *et seq.*

On September 5, 2008 Dr. Roy D. Beebe, Board-certified in orthopedic surgery, performed a partial lateral meniscectomy and debridement of unstable meniscus and anterior cruciate ligament tear on appellant's right knee. The procedure was required to repair a complete anterior cruciate ligament avulsion of her femoral condyle and small lateral anterior meniscal tear.

In a November 2, 2009 report, Dr. Beebe rated a 25 percent permanent impairment of the right lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition) (A.M.A., *Guides*). He stated that appellant had an ongoing derangement and mild persistent instability of the right knee, status post medial meniscectomy. On examination, Dr. Beebe found that she had a 1-2+ anterior drawer, with a reasonable end point at about one centimeter. He noted that appellant had undergone arthroscopic surgery on her right knee three times. Dr. Beebe opined that she had reached maximum clinical improvement, as he did not believe she would benefit from additional surgery. He found on examination that appellant had full extension, 125 degrees of flexion, with no medial or lateral instability. Dr. Beebe found that she has a 25 percent permanent impairment of the right knee based on limitation of motion, anterior cruciate deficiency, medial meniscal tear, and ongoing synovitis, pursuant to the fourth edition of the A.M.A., *Guides*.

In a June 8, 2010 report, Dr. Beebe stated that appellant had a 25 percent permanent impairment of her right lower leg pursuant to the sixth edition of the A.M.A., *Guides*.

On June 22, 2010 appellant filed a Form CA-7 claim for a schedule award based on a loss of use of her right lower extremity.

In a report dated July 16, 2010, an OWCP medical adviser found that appellant had a 10 percent impairment of the right lower extremity pursuant to the sixth edition of the A.M.A., *Guides*. He noted that appellant was entitled to the rating method which afforded her the greater degree of impairment. In this case, the medical adviser found a diagnosis-based impairment methodology was the preferred, appropriate means of rating appellant's right knee impairment. He stated that appellant underwent surgical treatment for both the medial meniscus and anterior cruciate ligament (ACL) laxity. The medical adviser noted that, pursuant to page 389 of the A.M.A., *Guides*, "if more than one diagnosis can be used, the highest causally related impairment rating should be used; this will generally be the more specific diagnosis."[2] Based on this principle, he found that, because ACL laxity provided a higher rating, he would rely on this diagnosis; there was no additional impairment for the partial meniscectomy.

OWCP's medical adviser noted that, under Table 16-3, Knee Regional Grid, Lower Extremity Impairments at page 510, the section of the A.M.A., *Guides* which rated diagnosis-based impairments for cruciate or collateral ligament injury,[3] there is a class 1 rating for "mild laxity" with a default score of 10 percent lower extremity impairment. He found that appellant had a mild impairment based on Dr. Beebe's findings of a 1-2+ anterior drawer with firm end point and a 1+ Lachman's with a firm end point at 1 centimeter. The medical adviser stated that

[2] A.M.A., *Guides* 389.

[3] *Id.* at 510.

joint laxity up to one centimeter was considered mild for ACL laxity of the knee. He applied the net adjustment formula at pages 521-22 of the A.M.A., *Guides*,[4] finding that the grade modifier at Table 16-6 for functional history was zero, the grade modifier for physical examination at Table 16-7 was zero, and the grade modifier at Table 16-8 for clinical studies was two. The medical adviser found that there was no grade modifier for physical examination at section 16.3b, adjustment grid, page 517 of the A.M.A., *Guides* and Table 16-7, physical examination adjustment at page 517[5] since the physical examination finding of mild laxity was used for proper class placement within the grid. He assigned a grade modifier of 2 for clinical studies at section 16.3, adjustment grid and Table 16-8, clinical studies adjustment, at page 519,[6] as the clinical studies were used to confirm the diagnosis and also demonstrated the deficit of the medial meniscus. The medical adviser also found that there was no grade modifier for functional history. He therefore concluded that the net adjustment compared to diagnosis class 1 is 0, grade B which results in a 10 percent lower extremity impairment pursuant to Table 16-3, page 510 of the A.M.A., *Guides*.[7]

By decision dated July 26, 2010, OWCP granted appellant a schedule award for a 10 percent permanent impairment of the right lower extremity for the period November 2, 2009 to May 2, 2010, for a total of 28.8 weeks of compensation.

In an August 12, 2010 report, Dr. Beebe stated that appellant had a 20 percent permanent physical impairment of her right knee, based on her instability, progressive degenerative changes, chronic synovitis and partial meniscectomy. He found that, pursuant to the A.M.A., *Guides*, this yielded a class 2 impairment with associated instability and degenerative changes.

In an August 31, 2010 report, Dr. Beebe opined that appellant had a 25 percent right lower extremity impairment, which yielded a class 2 injury with associated instability and degenerative changes.

By letter dated August 5, 2010, appellant's attorney requested an oral hearing which was held on January 8, 2011.

By decision dated March 10, 2011, an OWCP hearing representative affirmed the July 26, 2010 decision.

In an April 12, 2011 report, Dr. John P. Fulkerson, Board-certified in orthopedic surgery, expressed his agreement with Dr. Beebe's rating of 25 percent right lower extremity impairment for appellant's right knee. He noted that she had anterior cruciate ligament deficiency as documented by arthroscopy, loss of medial meniscus and degenerative changes in the right knee. Dr. Fulkerson also stated that appellant had some full thickness cartilage loss on her patella.

[4] *Id.* at 521-22.

[5] *Id.* at 509.

[6] *Id.* at 519.

[7] *Id.* at 510.

By letter dated April 26, 2011, appellant, through his attorney, requested reconsideration.

By decision dated July 22, 2011, OWCP denied modification of the July 26, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA[8] and its implementing regulations[9] 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, FECA 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, 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 regulations as the appropriate standard for evaluating schedule losses.[10] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[11]

ANALYSIS

In its July 26, 2010 decision, OWCP granted appellant a schedule award for a 10 percent right lower extremity impairment. It relied on the opinion of OWCP's medical adviser that appellant's impairment should be based on laxity of the anterior cruciate ligament, pursuant to Table 16-3 of the A.M.A., *Guides*. The Board notes that the A.M.A., *Guides* directs examiners to rate diagnosis-based impairments for the lower extremities pursuant to Chapter 16, which states at page 497, section 16.2a that impairments are defined by class and grade. If more than one diagnosis in a region (*i.e.*, hip, knee and/or foot/ankle) can be used the one that provides the most clinically accurate and causally-related impairment rating should be used.

In accordance with this section the examiner is instructed to utilize the net adjustment formula outlined at pages 521-22 of the A.M.A., *Guides*, to obtain the proper impairment rating. OWCP's medical adviser determined that appellant's laxity of the anterior cruciate ligament should be rated as a 10 percent impairment, a class 1, mild impairment, pursuant to the regional grid at Table 16-3, page 510 of the A.M.A., *Guides*. He applied the net adjustment formula at pages 521-22 of the A.M.A., *Guides*, finding that the grade modifier at Table 16-6 for functional history was zero, the grade modifier for physical examination at Table 16-7 was zero, and the grade modifier at Table 16-8 for clinical studies was two. OWCP's medical adviser indicated that the grade modifier for clinical studies was the most significant factor in rendering appellant's impairment rating. He noted that clinical studies were used to confirm the diagnosis

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

[10] *Id.*

[11] *Veronica Williams*, 56 ECAB 367, 370 (2005).

of laxity of the anterior cruciate ligament based on the Dr. Beebe's calculations made in his November 2, 2009 report.

Relying on these calculations, OWCP's medical adviser found that appellant had a class 1, grade B default impairment for anterior cruciate laxity, which yielded a 10 percent impairment of the right lower extremity pursuant to the regional grid at Table 16-3, page 510. The Board finds that OWCP's medical adviser properly determined that appellant had a 10 percent permanent impairment of her right lower extremity, as he calculated this rating based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*.

Appellant subsequently submitted reports from Drs. Beebe and Fulkerson, who concurred that appellant had a 25 percent impairment of the right lower extremity for her accepted right knee condition. These reports are of diminished probative weight, however, as these physicians did not correlate this rating to the applicable protocols of the sixth edition of the A.M.A., *Guides*.[12] OWCP properly found that the opinion of its medical adviser constituted sufficient medical rationale to support the July 26, 2010 schedule award decision. As appellant did not submit medical evidence to support an additional schedule award greater than the 10 percent for the right lower extremity already awarded, the Board will affirm OWCP's March 10 and July 22, 2011 decisions.

CONCLUSION

The Board finds that appellant has no more than a 10 percent permanent impairment of the right lower extremity, for which she received a schedule award.

[12] The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005). The Board notes that Dr. Beebe provided differing impairment ratings in several reports, which further diminished the probative weight of his opinion.

ORDER

IT IS HEREBY ORDERED THAT the July 22 and March 10, 2011 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: March 22, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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