

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH E. RUFFIN and DEPARTMENT OF DEFENSE,
DEFENSE PERSONNEL SUPPORT CENTER, Philadelphia, Pa.

*Docket No. 96-2115; Submitted on the Record;
Issued June 18, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she has a permanent impairment of her right knee due to the accepted employment injury of May 26, 1992 which would entitle her to a schedule award under Section 8107 of the Federal Employees' Compensation Act.

On May 26, 1992, appellant, a 42-year-old inventory management specialist, injured her right knee when her right leg collapsed under her after she stepped from a bus at the employing establishment. Appellant filed a Form CA-1 claim for continuation of pay on June 3, 1992, which was accepted by the Office of Workers' Compensation Programs for strain of the right knee in a letter dated July 14, 1992. Appellant was released to return to light duty on November 9, 1992 by her treating physician, Dr. Barry Peff, a Board-certified orthopedic surgeon and family practitioner, who released appellant to full duty on April 26, 1993.

In letters dated June 1, 1993, the Office scheduled appellant for a second opinion medical examination with Dr. Noubar Didizian, a specialist in orthopedic surgery, for June 17, 1993. In a report dated June 17, 1993, Dr. Didizian stated that x-rays of May 26, 1992 of the right femur, right knee and right hip were negative for bony or joint pathology, and advised that his examination of June 16, 1993 was negative for any residual pathology. Dr. Didizian further stated that appellant was functioning and had minimal subjective complaints, and, noting appellant's obesity, recommended a weight loss and exercise program to compensate for her congenital deficiency. Dr. Didizian concluded that whatever injuries she initially sustained on May 26, 1992 had resolved, and that she required no further medical treatment.

Appellant filed a Form CA-7 claim for a schedule award based on permanent impairment of her right knee on June 30, 1993.

In letters dated June 2, 1994, the Office scheduled appellant for an examination with Dr. Richard Band, a Board-certified orthopedic surgeon, for June 16, 1994.

In an report dated June 16 1994, Dr. Band diagnosed mild chondromalacia patella of the right knee. Dr. Band stated that appellant underwent a magnetic resonance imaging scan [MRI] on June 4, 1992 which showed an effusion with no evidence of a distinct tear of the meniscus. Dr. Band noted no atrophy of the quadriceps, with no effusion, and no jointline tenderness. Dr. Band further noted that appellant could extend and flex fully, and was stable in response to medial and lateral stress testing, with negative patella inhibition and apprehension tests. Dr. Band recommended a home exercise program of isometrics and isotonic.

In a letter dated September 9, 1994, the Office requested that Dr. Band submit a supplemental report. The Office asked Dr. Band to determine whether appellant's present complaints were related to the accepted May 26, 1992 employment incident, and whether the treatment he recommended was based on residuals of the knee sprain, and, if so, to determine the permanent loss of function of her right knee due to the May 26, 1992 employment injury, including loss of joint motion expressed in degrees, sensory deficit or loss of strength expressed in percentage, applying the fourth edition of *the Guides*.

In response to the Office's September 9, 1994 letter, Dr. Band submitted a report dated October 5, 1994 in which he found that appellant's present knee complaints were related to residuals of the accepted May 26, 1992 employment injury. Dr. Band further found, however, that the employment injury had not resulted in any permanent loss of function or impairment. Dr. Band commented that appellant's condition should resolve within six months if she followed his outlined recommendations.

By decision dated November 30, 1994, the Office denied appellant's claim for an award under the schedule for permanent impairment of the right knee. In a memorandum to the Director, the claims examiner stated that the medical evidence of record -- the weight of which was represented by Drs. Didizian and Band -- indicated that appellant did not sustain a permanent impairment of the right knee resulting from the accepted May 26, 1992 employment injury.

In a letter to the Office dated January 26, 1995, appellant's representative requested reconsideration of the Office's November 30, 1994 decision, contending that the Office should have found that Dr. Band's June 16, 1994 medical report was supportive of appellant's claim for an award of permanent impairment of the right knee under the schedule.

In a decision dated May 10, 1995, the Office affirmed its November 30, 1994 decision denying benefits for an award for permanent impairment of the right knee under the schedule. In a memorandum to the Director, the claims examiner stated that, contrary to appellant's contention on appeal, Dr. Band specifically addressed the issue of permanent impairment and found that appellant had no permanent impairment or loss of function of the knee.

In a letter to the Office dated February 2, 1996, appellant's representative requested reconsideration of the Office's May 10, 1995 decision. Accompanying the request was a June 1, 1995 report from Dr. Samuel C. Santangelo, a Board-certified orthopedic surgeon. Dr. Santangelo noted that the MRI performed on appellant in 1992 was essentially unremarkable except for evidence of an effusion and perhaps some changes in the posterior horn of the medial meniscus, which probably represented early degenerative changes. Dr. Santangelo advised that

appellant's symptoms might represent early degenerative arthritis of the joint, and he stated that he didn't think she had a significant tear of either meniscus. Dr. Santangelo did not provide any rating of a permanent impairment pursuant to the fourth edition of *the Guides*.

In a decision dated May 1, 1996, the Office affirmed its May 10, 1995 decision denying benefits for an award for permanent impairment of the right knee under the schedule. In a memorandum to the Director, the claims examiner noted that there was no evidence that appellant had a permanent impairment of the right knee resulting from the accepted May 26, 1992 employment injury.

The Board finds that appellant has not met her burden of proof in establishing that she has any permanent impairment of her right knee due to the accepted employment injury of May 26, 1992 which would entitle her to a schedule award under Section 8107 of the Act.

An employee seeking compensation under the Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative, and substantial evidence,² including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.³

Section 8107 of the 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.⁴ 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 a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

In the present case, appellant has failed to submit evidence establishing that she has a permanent impairment of her right knee caused by residuals from the accepted May 26, 1992 employment injury which would entitle her to a schedule award. The weight of the medical evidence rests with the June 16 and October 5, 1994 reports of Dr. Band, who found that although appellant's present knee complaints were related to residuals from her accepted May 26, 1992 employment injury, the employment injury had not resulted in any permanent loss of function or impairment. Dr. Band also found that appellant's condition should resolve within six months if she followed his recommendations to undertake a home exercise program of isometrics and isotonic.

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

⁵ *Annette M. Dent*, 44 ECAB 403 (1993); *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989).

Appellant submitted treatment notes from Dr. Peff and the June 1, 1995 report of Dr. Santangelo, but neither of these physicians submitted a report indicating that appellant had any permanent impairment due to the accepted employment injury of May 26, 1992. Dr. Santangelo's opinion is of limited probative value in that he did not indicate any pertinent objective findings on examination or explain how employment factors could have resulted in a permanent impairment of the right knee. More importantly, Dr. Santangelo failed to provide an assessment of permanent impairment derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses; *i.e.*, a rating of a permanent impairment pursuant to the fourth edition of *the Guides*.

For these reasons, appellant has not met her burden of proof in establishing that she has a permanent impairment of her right knee due to the accepted employment injury of May 26, 1992 which would entitle her to a schedule award under section 8107 of the Act.

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 1, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 18, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member