

**United States Department of Labor
Employees' Compensation Appeals Board**

VIVIAN J. JACKSON, Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION, Alameda, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-191
Issued: March 8, 2004**

Appearances:
Vivian J. Jackson, 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
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On October 27, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated September 18, 2003. 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 has more than a 42 percent permanent impairment of the right lower extremity for which she received a schedule award.

FACTUAL HISTORY

On June 13, 1989 appellant, a 41-year-old computer operator, filed a traumatic injury claim (Form CA-1) alleging that she injured her right ankle and knee on June 9, 1989 when she fell down the stairs. The Office accepted the claim for right knee strain and authorized diagnostic arthroscopic surgery, which was performed on August 31, 1989. Appellant returned to full duty on February 9, 1990.

Appellant filed a claim for a schedule award on August 28, 1990.

By decision dated May 16, 1991, the Office granted appellant a schedule award for a 42 percent permanent impairment of the right leg. The period of the award ran for 86.4 weeks from April 4, 1990 to November 29, 1991.

Appellant filed a claim for a recurrence of disability beginning November 30, 1991 due to her employment injury. The Office accepted the recurrence claim on April 2, 1992 and subsequently placed her on the automatic rolls for temporary total disability. Appellant returned to work on March 1, 1993.

On November 1, 1993 appellant filed a claim for a schedule award.

By decision dated April 12, 1994, the Office found that appellant was not entitled to an additional schedule award.

In a February 2002 report, Dr. David Wren, Jr., an attending physician, noted “a complete absence of the anterior horn portion of the medial meniscus based upon a December 12, 2001 magnetic resonance imaging (MRI) scan of the right knee. He reported “a mild degree of degenerative arthritis in her right medial joint” which explained appellant’s stiffness, pain and giving way of her right knee.

In a report dated April 25, 2002, Dr. Wren, based on a physical examination and MRI scan, reported that appellant had an absent medial side meniscus and “significant narrowing of the medial joint compartment with arthritic changes.”

Appellant filed a claim for a schedule award which the Office received on July 2, 2002.

In a July 3, 2002 letter, the Office acknowledged receipt of appellant’s schedule award claim and advised her of the information required from her physician to support her claim.

In a letter dated February 21, 2003, the Office informed appellant that her file had been reviewed and it had been determined that Dr. Wren failed to provide any information relevant to whether she had any additional impairment due to her right knee injury. The Office advised appellant that she would be referred for an independent examination to determine whether she was entitled to an additional schedule award based upon an additional impairment.

On February 24, 2003 the Office referred appellant to Dr. Alan B. Kimelman a Board-certified physiatrist, to determine whether she sustained a permanent impairment due to her accepted employment injury. She did not keep her appointment on March 19, 2003 with Dr. Kimelman.

By decision dated September 18, 2003, the Office denied appellant’s claim on the basis that Dr. Wren failed to provide enough information to calculate any impairment. It also noted that she failed to attend an appointment with a second opinion physician as instructed.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

ANALYSIS

In the instant case, the Office issued a schedule award to appellant for a 42 percent impairment of her right lower extremity on May 16, 1991. The record contains no medical evidence establishing that she is entitled to a greater impairment rating. Dr. Wren's reports address appellant's right knee conditions, including a mild degree of degenerative arthritis and the instability problems she was having with her right knee. However, Dr. Wren provides no information which would allow a determination of an impairment of her right knee and her entitlement to an additional schedule award. Thus, Dr. Wren's opinions are insufficient to show that appellant is entitled to greater than a 42 percent impairment of her right lower extremity. The record contains no other recent medical evidence which would support appellant's contention that she is entitled to an increase in her previous schedule award of a 42 percent impairment for her right knee. Thus, the Board finds that the Office properly found appellant was not entitled to an additional schedule award amount.

CONCLUSION

The Board finds that appellant is not entitled to more than a 42 percent permanent impairment of the right lower extremity for which she received a schedule award.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁴ *Ronald R. Kraynak*, 53 ECAB ____ (Docket No. 00-1541, issued October 2, 2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 18, 2003 is affirmed.

Issued: March 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member