

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

_____)
P.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Coppell, TX, Employer)

_____)

Docket No. 09-565
Issued: October 15, 2009

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On December 22, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated October 17, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of her claim for a schedule award.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she has more than 23 percent impairment of the right lower extremity.

FACTUAL HISTORY

On October 16, 2003 appellant, then a 41-year-old city carrier, filed a traumatic injury claim alleging that she stepped off a curb and twisted her right knee. She noted that she had two prior surgeries to the knee in 2001 and 2002. Appellant stopped work on October 16, 2003. The Office accepted the claim for sprain/strain of the right knee and leg, a sprain/strain of the lumbosacral joint and a tear of the medial meniscus of the right knee. Appellant underwent an

arthroscopy of the right knee on May 17, 2004. She received appropriate compensation and benefits.¹

On June 30 and July 21, 2008 appellant filed a claim for a schedule award.

In support of her claim, appellant submitted a May 13, 2008 report from Dr. Louis D. Zegarelli, a Board-certified family practitioner and osteopath, who noted appellant's history of injury and treatment and utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*). Dr. Zegarelli indicated that appellant reached maximum medical improvement on May 13, 2008. He provided range of motion measurements for the right knee which included 135 degrees of flexion and 0 degrees of extension. Dr. Zegarelli referred to Table 17-10 and concluded that appellant did not have impairment for loss of range of motion in the right knee.² He also indicated that she did not have valgus or varus weakness or joint disruption. Dr. Zegarelli indicated that appellant underwent a partial medial meniscectomy which would afford two percent leg impairment. He also indicated that she had arthritis and underwent four operative procedures on her right knee. Dr. Zegarelli explained that two of the knee surgeries were directly related to the events of October 16, 2003 and the other two surgeries were associated with other work-related injuries. He also noted that an x-ray evaluation demonstrated a cartilage interval measurement of two millimeters for the right knee. Dr. Zegarelli referred to Table 17-31³ and determined that this would equate to 20 percent impairment to the lower extremity. He determined that no sensory or motor function deficit was noted and that appellant did not show evidence of muscle atrophy. Dr. Zegarelli combined the 20 percent lower extremity impairment for the degenerative arthritic condition with the 2 percent for the partial medial meniscectomy and opined that appellant had 22 percent lower extremity impairment.

On July 31, 2008 the Office requested that the Office medical adviser review Dr. Zegarelli's report and provide an opinion regarding permanent impairment to the right lower extremity.

In a report dated August 7, 2008, the Office medical adviser noted appellant's history of injury and treatment and utilized the A.M.A., *Guides*. He concurred with Dr. Zegarelli regarding the extent of appellant's impairment and opined that she reached maximum medical improvement on May 13, 2008. However, the Office medical adviser explained that appellant had previously received right leg schedule awards for total impairment of 23 percent. As this amount must be subtracted from any current impairment rating, he opined that she did not have any additional impairment for the right leg.

¹ The record reflects that appellant has received previous schedule awards. They include two percent to the right leg under No. xxxxxx149. She also received a schedule award of 14 percent to the right leg and 4 percent to the left leg under No. xxxxxx839. These other claims are not before the Board on this appeal. On April 11, 2005 appellant received a schedule award of seven percent to the right leg in the present claim, No. xxxxxx650. On May 9, 2005 the Office reduced her wage-loss compensation to zero finding that she was reemployed as a modified city letter carrier and that her actual wages met or exceeded the current wages of the job she held when injured.

² A.M.A., *Guides* 537.

³ *Id.* at 544.

On October 17, 2008 the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁴ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.⁵ The Act, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁶ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷

ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to an increased schedule award in accordance with the fifth edition of the A.M.A., *Guides*.

The Office accepted appellant's claim for sprain/strain of the right knee and leg and a sprain/strain of the lumbosacral joint/ligament for which appellant underwent an arthroscopy of the right knee on May 17, 2004. It also accepted a tear of the medial meniscus of the right knee. The Office previously paid appellant schedule awards representing 23 percent impairment of the right leg.

The Board notes that both Dr. Zegarelli and the Office medical adviser were in agreement that appellant had impairment of 22 percent to the right lower extremity and reached maximum medical improvement on May 13, 2008. Dr. Zegarelli, on May 13, 2008, determined that the range of motion measurements for the right knee were not severe enough to warrant a rating. Regarding the partial medial meniscectomy, the physicians referred to Table 17-33.⁸ The Board notes that a partial medial meniscectomy would afford appellant two percent lower extremity impairment. Dr. Zegarelli and the Office medical adviser also concurred that appellant had 20 percent leg impairment due to her knee arthritis under Table 17-31.⁹ The Board finds that Dr. Zegarelli and the Office medical adviser properly found that these combined impairments totaled 22 percent right lower extremity impairment.¹⁰ Further, the Office medical adviser explained that appellant had previously received a total impairment of 23 percent for the right lower extremity based on findings for the right knee. He subtracted the previous award from the

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Id.* at § 8107.

⁶ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁷ 20 C.F.R. § 10.404.

⁸ A.M.A., *Guides* 546.

⁹ *Id.* at 544.

¹⁰ *See id.* at 604.

present finding of 22 percent and explained that appellant was not entitled to receive any additional impairment.

As appellant previously received an award of 23 percent to the right leg, and her current impairment rating is, as noted, 22 percent for the right leg, she is not entitled to an increased schedule award. She did not submit any other medical evidence to support that she was entitled to an increased schedule award for her right leg. Accordingly, the Board finds that appellant has not established entitlement to an increased schedule award.¹¹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was entitled to an increased schedule award.

ORDER

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

Issued: October 15, 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

¹¹ The Board notes that, subsequent to the Office's October 17, 2008 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).