

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

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C.L., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Grand Rapids, MI, Employer )

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**Docket No. 09-870  
Issued: October 26, 2009**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 12, 2009 appellant filed a timely appeal from a January 9, 2009 decision of an Office of Workers' Compensation Programs' hearing representative, who affirmed a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than a 14 percent impairment of her left lower extremity, for which she received a schedule award.

**FACTUAL HISTORY**

This case has previously been before the Board.<sup>1</sup> In a May 4, 2004 decision, the Board reversed the Office's August 16, 2003 decision, which found that appellant's actual earnings as a modified clerk fairly and reasonably represented her wage-earning capacity. The facts and history contained in the prior appeal are incorporated by reference. On April 30, 2001 the Office

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<sup>1</sup> Docket No. 03-2249 (issued May 4, 2004).

accepted appellant's claim for left patellar chondromalacia and surgery was authorized. On May 11, 2001 appellant underwent a left knee arthroscopy and chondroplasty.

On December 1, 2007 appellant filed a claim for schedule award

In a letter dated December 27, 2007, appellant's representative provided an impairment rating from, Dr. Dee Ann Bialecki-Haase, an attending Board-certified family practitioner. On December 12, 2007 Dr. Bialecki-Haase reviewed appellant's history of injury and medical treatment and utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*). She noted that appellant had complaints of chronic and severe pain in the left knee and used a transcutaneous electrical nerve stimulator unit to control her pain. Dr. Bialecki-Haase set forth work restrictions and noted findings that included an antalgic gait and limp favoring appellant's left side. She advised that arthroscopic scars were present on the left knee but no effusion was present and there was tenderness over the joint lines and patella. Dr. Bialecki-Haase indicated that appellant had 1 centimeter (cm) laxity of the medial collateral ligament and .5 cm laxity of the lateral collateral ligament. She determined that the posterior and anterior cruciate ligaments were intact and there was mild instability of the patella. On range of motion of the left knee, Dr. Bialecki-Haase found 105 degrees of flexion and 0 degrees of extension. She determined that the left thigh measured 1 cm less in circumference than the right at 10 centimeters above the patella while the left calf was 1.2 cm less than the right at mid point. Dr. Bialecki-Haase referred to Table 17-6 and noted that thigh muscle atrophy was rated at four percent and the calf muscle atrophy impairment at five percent.<sup>2</sup> She referred to Table 17-33 and determined that mild collateral ligament laxity was equal to seven percent impairment of the lower extremity and instability of the patella was equivalent to seven percent impairment of the lower extremity.<sup>3</sup> Dr. Bialecki-Haase opined that appellant had a total impairment of 23 percent to her left lower extremity. She advised that appellant had reached maximum medical improvement.<sup>4</sup>

On January 28, 2008 the Office requested that the Office medical adviser review Dr. Bialecki-Haase's recommendation of impairment and provide an opinion regarding the extent of appellant's impairment in accordance with the A.M.A., *Guides*.

In a February 13, 2008 report, the Office medical adviser reviewed appellant's history and the impairment evaluation from Dr. Bialecki-Haase. He agreed that appellant reached maximum medical improvement on December 12, 2007. The Office medical adviser disagreed, however, with Dr. Bialecki-Haase's impairment rating because she had combined impairments under the diagnosis-based method together with atrophy, which was not permitted under the cross-usage chart.<sup>5</sup> He referred to Table 17-33 and noted that appellant had mild medial

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<sup>2</sup> A.M.A., *Guides* 530.

<sup>3</sup> *Id.* at 546.

<sup>4</sup> Dr. Bialecki-Haase indicated that the last surgery was six months earlier and produced no significant improvement in appellant's condition.

<sup>5</sup> A.M.A., *Guides* 526.

collateral ligament (MCL) laxity which would support seven percent impairment.<sup>6</sup> The Office medical adviser also noted that patellar instability would support an impairment of seven percent to the lower extremity.<sup>7</sup> He concluded that appellant had a combined total of 14 percent impairment of the left leg.

On July 2, 2008 the Office granted appellant a schedule award for 14 percent impairment of the left lower extremity. The award covered a period of 40.32 weeks from December 12, 2007 to September 19, 2008.

On July 9, 2008 appellant's representative requested a telephonic hearing, which was held on November 3, 2008.

On January 9, 2008 the Office hearing representative affirmed the July 2, 2008 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>8</sup> and its implementing regulations<sup>9</sup> 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>10</sup> The Board notes that the fifth edition of the A.M.A., *Guides* was adopted by the Office effective February 1, 2001.<sup>11</sup>

In rating lower extremity impairment under Chapter 17, the cross-usage chart provides that not all impairment affecting the member may be combined together.<sup>12</sup> Rather, when more than one rating method may be used, the medical evaluator should address that combination which is most clinically appropriate.<sup>13</sup>

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<sup>6</sup> *Id.* at 546.

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404.

<sup>10</sup> *Id.* See *Billy B. Scoles*, 57 ECAB 258 (2005).

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>12</sup> See *Laura Heyen*, 57 ECAB 435 (2006).

<sup>13</sup> A.M.A., *Guides* 526.

## ANALYSIS

The Office accepted appellant's claim for left patellar chondromalacia and authorized surgery for a left knee arthroscopy.

Appellant submitted the December 12, 2007 report of Dr. Bialecki-Haase, who provided an impairment rating of 23 percent loss of use of the left leg. For atrophy, Dr. Bialecki-Haase found that the left thigh measured one cm less than the right thigh which was four percent impairment.<sup>14</sup> The left calf measured 1.2 cm less than the right, which was five percent impairment. Under Table 17-33 mild collateral ligament laxity of the left knee was seven percent impairment of the lower extremity and instability of the patella was also seven percent impairment of the lower extremity.<sup>15</sup> Dr. Bialecki-Haase opined that appellant had total impairment of 23 percent to her left leg.

On February 13, 2008 the Office medical adviser found that Dr. Bialecki-Haase improperly combined the atrophy impairment with that for laxity of the collateral ligament and patella instability. He noted that this was not permitted under Table 17-2, the cross-usage chart, which precludes certain methods of evaluating impairment from being combined.<sup>16</sup> In particular, it specifically excludes atrophy from being combined with the other diagnosis-based impairments. Allowing these values to be combined would artificially inflate the extent of impairment to the left leg. The Office medical adviser noted that under Table 17-33 mild collateral ligament laxity and patellar instability both represented seven percent impairment to the lower extremity.<sup>17</sup> He found that this best assessed the extent of appellant's impairment as a rating of atrophy would result in a lesser impairment. The Office medical adviser concluded that appellant had combined total impairment of 14 percent to the left lower extremity and reached maximum medical improvement on December 12, 2007.

The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* in determining that appellant had 14 percent permanent impairment based on the diagnosis-based estimates under Table 17-33. This method of rating impairment provides a greater total impairment value from that based on atrophy under Table 17-6. This is consistent with the A.M.A., *Guides* and Board precedent.<sup>18</sup>

## CONCLUSION

The Board finds that appellant has 14 percent impairment of her left lower extremity, for which she received a schedule award.

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<sup>14</sup> *Id.* at 530.

<sup>15</sup> *Id.* at 546.

<sup>16</sup> *Id.* at 526.

<sup>17</sup> *Id.* at 546.

<sup>18</sup> *See id.* at 527. *See C.J.*, 60 ECAB \_\_\_\_ (Docket No. 08-2429, issued August 3, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 9, 2009 is affirmed.

Issued: October 26, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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