

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

T.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-204
Issued: August 11, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 26, 2009 appellant filed a timely appeal from the June 19 and October 14, 2009 schedule award decisions of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant has more than a 28 percent permanent impairment of her left leg for which she received a schedule award.

FACTUAL HISTORY

On December 29, 2006 appellant, then a 35-year-old letter carrier, filed an occupational disease claim alleging left knee arthritis and a worn ligament from walking up and down steps and standing too long. She first realized her condition was caused or aggravated by her employment on December 23, 2006. Appellant did not stop work. On March 15, 2007 the Office accepted her claim for a small effusion of the left knee. Appellant received compensation benefits. On March 28, 2007 she requested a schedule award.

A July 11, 2007 magnetic resonance imaging scan of the left knee was read by Dr. Timothy Cotter, a Board-certified diagnostic radiologist, who noted mild to moderate osteoarthritis primarily in the medial joint compartment with osteophytes. The anterior cruciate, posterior cruciate, medial collateral and lateral collateral ligaments were intact with no evidence of traumatic injury. Dr. Cotter noted that the extensor mechanism was unremarkable and the medial and lateral menisci were normal in signal intensity and morphology and that there was no significant joint effusion. He found that appellant had a small cystic focus adjacent to the anterior aspect of the medial tibial plateau just below the joint line. Dr. Cotter advised that it might represent a small ganglion cyst. He indicated that appellant had a small amount of adjacent nonspecific edema and no evidence of a meniscal or ligament tear.

In an August 16, 2007 report, Dr. Jay M. Brooker, a Board-certified orthopedic surgeon and treating physician, addressed appellant's knee impairment. He advised that she had limitation of range of motion involving about 4 degrees short of full extension and 30 degrees short of full flexion. Appellant had joint space loss to about a millimeter (mm) on the medial aspect and patellofemoral aspect of the knee with osteophytes. Dr. Brooker found that she had "4/5" strength in the left quadriceps and hamstring muscles and patellofemoral instability.

In a September 3, 2007 report, an Office medical adviser reviewed the medical evidence with reference to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides* hereinafter) (5th ed. 2001). He noted appellant's history of injury and treatment and that her degenerative arthritis condition was accepted as work related. Appellant received conservative treatment which included activity modification and medication. The Office medical adviser noted that she had complaints of medial side knee pain and range of motion for the knee from 4 to 120 degrees. Appellant also had mild strength deficit in both the quadriceps and hamstring musculature, which was secondary to pain rather than true organic weakness. The medical adviser stated that plain x-rays revealed a one mm cartilage interval in both the medial and patellofemoral compartments, which was 28 percent impairment under Table 17-31, page 544, of the A.M.A., *Guides*. He determined that appellant reached maximum medical improvement on August 16, 2007.

In an October 11, 2007 decision, the Office granted appellant a schedule award for a 28 percent impairment of the left leg. The period of the award ran for 80.64 weeks.

On October 2 and 28, 2008 appellant filed claims for an increased schedule award. In a March 4, 2009 letter, the Office informed her of the medical evidence needed to support her claim.

In an April 28, 2009 report, Dr. Brooker stated that appellant was seen in follow up. He noted that her range of motion was 5 to 110 degrees with crepitus, a varus deformity and a mild effusion within her knee. Dr. Brooker found tenderness along the joint margins and no instability. He advised that appellant's findings had worsened compared to his earlier assessment. Dr. Brooker explained that her condition was degenerative and to provide an estimate of permanent impairment that would continue to change was "pointless." He stated that appellant's condition could be corrected with knee replacement but she was too young at this time.

In a June 3, 2009 report, the Office medical adviser referred to the sixth edition of the A.M.A., *Guides*.¹ He noted the history of injury and treatment and advised that no new x-rays had been submitted. The Office medical adviser stated that Dr. Brooker found a varus deformity at the knee with motion from 5 to 110 degrees but no instability. Based on the diagnosis based impairment (DBI), appellant had no more than a 28 percent permanent impairment for a Class C, Grade B, knee arthritis with a cartilage interval of one mm (GMFH 2, GMPE 3, GMCS n/a).² The Office medical adviser found no additional impairment was warranted.

By decision dated June 19, 2009, the Office denied appellant's claim for an increased schedule award.

On July 1, 2009 appellant requested a review of the written record. She submitted copies of Dr. Brooker's April 28, 2009 report as well as September 15 and 22, 2009 treatment records that did not address her permanent impairment.

In an October 14, 2009 decision, an Office hearing representative affirmed the June 19, 2009 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing federal regulations,⁴ 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical

¹ A.M.A., *Guides* (6th ed. 2009).

² *Id.* at 511, Table 16-3.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

examination (GMPE) and clinical studies (GMCS).⁷ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁸

ANALYSIS

In support of appellant's claim for an increased schedule award, the Office requested that her treating physician provide an impairment rating. However, in an April 28, 2009 report, Dr. Brooker explained that her degenerative condition would worsen and that it would be "pointless" to provide an estimate of permanent impairment. His subsequent treatment notes do not address the issue of permanent impairment. As Dr. Brooker did not provide any estimate of impairment, his reports are of limited probative value.

On a June 3, 2009 an Office medical adviser utilized the sixth edition of the A.M.A., *Guides* to find that appellant did not sustain additional impairment. He noted that Dr. Brooker reiterated that appellant had a varus deformity at the knee with motion from 5 to 110 degrees but no instability. The Office medical adviser utilized the DBI under Table 16-3 of the A.M.A., *Guides*. He noted applicable grade modifiers and advised that appellant did not have more than the 28 percent permanent impairment for a Class 3, Grade B, knee arthritis with a cartilage interval of one mm. The Office medical adviser concluded that appellant's condition did not warrant any additional impairment rating.

The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the medical evidence of record. There is no medical evidence of record supporting greater impairment pursuant to the A.M.A., *Guides* than the 28 percent rating previously made.

On appeal, appellant contends that Dr. Brooker stated that her knee condition had worsened. However, as noted, he did not provide any opinion supporting greater impairment of the left knee. Dr. Brooker's report provides no basis for a greater impairment rating.

CONCLUSION

The Board finds that appellant does not have more than a 28 percent permanent impairment of her left leg, for which she received a schedule award.

⁷ A.M.A., *Guides* 494-531.

⁸ *Id.* at 521.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 14, 2009 is affirmed.

Issued: August 11, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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