

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

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| J.L., Appellant |) | |
| |) | |
| and |) | Docket No. 10-1110 |
| |) | Issued: December 6, 2010 |
| U.S. POSTAL SERVICE, POST OFFICE, Raleigh, NC, Employer |) | |
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 15, 2010 appellant filed a timely appeal from the December 15, 2009 merit decision of the Office of Workers' Compensation Programs, which denied her schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant is entitled to a schedule award.

FACTUAL HISTORY

On February 8, 2009 appellant, then a 29-year-old clerk, sustained a left knee injury in the performance of duty when she caught her foot on a fatigue mat as she was turning. The Office accepted her claim for left knee chondromalacia patella.

Appellant filed a schedule award claim. In an August 27, 2009 report, Dr. Mark W. Galland, an orthopedic surgeon, found that she had a 10 percent impairment of her left leg based on North Carolina Industrial Commission standards. In a November 2, 2009 letter, the Office explained that it determined impairment using the sixth edition of the American Medical

Association, *Guides to the Evaluation of Permanent Impairment*. It asked appellant to inform her physician and have him submit a supplemental medical report with the required information. The Office attached a permanent impairment worksheet for her physician's use.

In a December 15, 2009 decision, the Office denied appellant's schedule award claim. It found that she did not submit the evidence necessary to establish any impairment of her left leg.

On appeal, appellant argues that she did her part, but her physician failed to mail in his portion of the paperwork in a timely manner.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.²

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.³ A claimant seeking a schedule award therefore has the burden of establishing that her accepted employment injury caused permanent impairment of a scheduled member, organ or function of the body.⁴

ANALYSIS

Appellant's orthopedic surgeon, Dr. Galland, offered a 10 percent impairment rating based on North Carolina Industrial Commission standards, but those are not the standards used by the Office to rate impairment. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the standard for determining the percentage of impairment.

Under the sixth edition of the A.M.A., *Guides*, diagnosis-based impairment is the primary method of evaluating the lower limbs. Impairment is first and primarily defined by class, that is, whether the problem is mild, moderate or severe according to the appropriate grid. The impairment rating is then refined by small adjustments in grade.⁵

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *E.g., Russell E. Grove*, 14 ECAB 288 (1963) (where medical reports from the attending physicians showed that the only leg impairment was due to arthritis of the knees, which was not injury related, the claimant failed to meet his burden of proof to establish entitlement to a schedule award).

⁵ A.M.A., *Guides* 497.

The Office accepted appellant's claim for left chondromalacia patella. On November 2, 2009 it advised her of the relevant standards used for determining permanent impairment and provided her an opportunity to submit additional evidence from her physician.

The Office was unable to determine whether appellant was entitled to a schedule award because her physician did not evaluate her impairment under the A.M.A., *Guides*. It had no basis to determine whether her accepted injury resulted in permanent impairment of her left knee. Appellant bears the burden of proof to establish her entitlement to the benefits claimed and she has not met that burden.⁶ The Board will therefore affirm the Office's December 15, 2009 decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she is entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁶ Should appellant's orthopedic surgeon evaluate her impairment under the sixth edition of the A.M.A., *Guides*, appellant may, consistent with the appeal rights attached to the Office's December 15, 2009 decision, submit that evidence to the Office and request, in writing, that it reconsider her claim.