

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

M.S., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION CENTER, Atlanta, GA,)
Employer)

**Docket No. 15-0879
Issued: July 15, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2015 appellant filed a timely appeal from the October 30, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant's July 8, 2009 employment injury caused any permanent impairment to her right lower extremity.

FACTUAL HISTORY

On July 8, 2009 appellant, a 38-year-old mail handler, sustained an injury in the performance of duty when she stepped into a hole while carrying sacks of mail. She stated that

¹ 5 U.S.C. § 8101 *et seq.*

her right knee was bruised and swollen at the top and that this was a knee she had previously injured. Appellant also stated there was tingling in her right ankle.

OWCP accepted appellant's claim for contusion of the right knee and right lower extremity. Following an imaging study showing radial tears involving the free edge of the body and posterior horn of the medial meniscus, it accepted appellant's claim for the additional condition of right medial meniscus tear.

Shortly thereafter appellant underwent arthroscopic surgery for a medial meniscectomy. However, the articular surface in the medial and lateral compartments was normal. There was a large, thick medial plica in the suprapatellar area, which the Board-certified orthopedic surgeon, Dr. Howard B. Krone, excised. No meniscectomy was warranted.

Appellant filed a claim for a schedule award on September 3, 2014. Dr. Krone evaluated appellant's impairment. He described her complaint of some chronic pain, 3/5 on occasion, over the medial femoral condyle of the right knee. There was no swelling, locking, or giving way. There was some slight tenderness over the medial femoral condyle but no evidence of any thickening or effusion. Appellant had full range of motion and no patellofemoral crepitus. X-rays were normal. It was Dr. Krone's opinion that appellant had no permanent impairment to the right knee based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009).

An OWCP medical adviser reviewed Dr. Krone's evaluation. He noted that appellant's arthroscopic surgery showed the menisci intact. The source of appellant's problem was instead a large, thick plica, and the sixth edition of the A.M.A., *Guides* did not provide an impairment rating for plica. The medical adviser agreed with appellant's orthopedic surgeon that appellant had no permanent impairment of her right lower extremity.

In a decision dated October 30, 2014, OWCP denied appellant's schedule award claim. It found that the medical evidence did not support that she had a permanent impairment to her right lower extremity.

LEGAL PRECEDENT

The schedule award provision of FECA² and the implementing regulations³ 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.⁴

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

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

standards applicable to all claimants. OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

ANALYSIS

Appellant filed a claim for a schedule award, but submitted no evaluation showing permanent impairment due to her July 8, 2009 work injury. Her surgeon, Dr. Krone, found no impairment of her right lower extremity. An OWCP medical adviser reviewed the matter and agreed. Thus, no physician has supported appellant's schedule award claim.

OWCP accepted appellant's claim for a right knee contusion and a medial meniscus tear. Table 16-3, page 509 of the A.M.A., *Guides*, provides a default lower extremity impairment rating of two percent for a meniscal tear, partial medial or lateral meniscectomy, or meniscal repair. When Dr. Krone performed the arthroscopy, he found no tear. As the medical adviser noted, the menisci were intact. There was no physical basis, therefore, for the payment of a schedule award.

The medical adviser noted that the sixth edition of the A.M.A., *Guides* does not provide an impairment rating for plica. In fact, Table 16-3, page 509 of the A.M.A., *Guides* provide a default impairment rating of one percent for soft-tissue injuries such as bursitis, plica, history of contusion, or other soft-tissue lesion. Impairment ratings for schedule awards include those conditions accepted by OWCP as job related.⁷ OWCP did not accept the condition of plica. To receive any rating for plica or history of contusion, however, Table 16-3 requires significant consistent palpatory findings or radiographic findings. When Dr. Krone performed his impairment evaluation, he described the tenderness over appellant's medial femoral condyle as "some slight tenderness," not significant. X-rays were normal, and appellant had full range of motion. Thus, there was again no basis for the payment of a schedule award.

Because the medical opinion evidence does not support that appellant's July 8, 2009 employment injury caused any permanent impairment to her right lower extremity, the Board finds that appellant is not entitled to a schedule award. Accordingly, the Board will affirm OWCP's October 30, 2014 decision.

CONCLUSION

The Board finds that the medical opinion evidence fails to establish that appellant's July 8, 2009 employment injury caused any permanent impairment to her right lower extremity.

⁵ 20 C.F.R. § 10.404; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a (February 2013).

⁷ *Id.* at Chapter 2.808.5.d.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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