

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KARLA M. MILLER and U.S. POSTAL SERVICE,  
POST OFFICE, San Bernardino, CA

*Docket No. 98-992; Submitted on the Record;  
Issued November 24, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has established that she has more than a five percent permanent impairment of the lower left extremity for which she has received a schedule award.

On April 5, 1993 appellant, then a 30-year-old postal clerk,<sup>1</sup> filed a claim for compensation alleging that on that day she injured her left knee while in the performance of duty.<sup>2</sup>

In a medical report dated April 12, 1993, Dr. Clifford D. Merkel, Board-certified in orthopedic surgery, stated that he had examined appellant that day and stated that she had sustained an acute left patella lateral dislocation causally related to her April 5, 1993 work-related injury.<sup>3</sup>

On December 7, 1995 the Office of Workers' Compensation Programs referred appellant to Dr. Nick K. Sharma, Board-certified in orthopedic surgery, to determine the extent of any permanent impairment caused by the accepted employment injury. The Office advised the doctor to use the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (third edition 1991).

In a medical report dated December 27, 1995, Dr. Sharma, upon examination, stated that he had examined appellant on December 22, 1995 and that she was status post-traumatic dislocation of the left patella which resulted in a four percent whole person impairment and a 13 percent lower extremity impairment.<sup>4</sup> He stated that in accordance with the A.M.A., *Guides*, she

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<sup>1</sup> The nonfatal summary lists appellant's date of birth as December 12, 1962. The record shows different ages for appellant in various medical reports.

<sup>2</sup> The record contains medical reports that address treatment to someone other than appellant.

<sup>3</sup> Dr. Merkel noted that appellant was 34 years old.

<sup>4</sup> Dr. Sharma did not note which edition of the *Guides* he referenced.

had the following measurable factors: loss of function due to pain when kneeling, squatting, ascending and descending stairs; no loss of function through motion or limitation; loss of function due to atrophy of the vastus medialis obliquus. He also rated appellant's intensity of pain as mild, becoming moderate with activities such as climbing stairs. In an undated work capacity evaluation form, Dr. Sharma stated that appellant's date of maximum medical improvement was December 22, 1995.<sup>5</sup>

On January 22, 1996 appellant filed a claim for recurrence of disability.<sup>6</sup>

On February 2, 1996 the Office accepted appellant's claim for recurrence of the left knee and authorized a magnetic resonance imaging (MRI) scan as recommended by Dr. Sharma.

In a medical report dated August 5, 1996, Dr. Owen McIvor, appellant's treating physician, Board-certified in orthopedic surgery, stated that he had reviewed appellant's July 24, 1996 MRI scan and determined that she had mild chondromalacia patella. He stated that appellant's condition would improve gradually and that arthroscopic surgery was not necessary at that time.<sup>7</sup>

In a medical report dated November 22, 1996, Dr. McIvor stated that appellant had post-traumatic chondromalacia patella and a possible meniscus tear for which surgical intervention was not required. He noted a negative July 24, 1996 MRI scan, noting also appellant's subjective comment that her symptoms have been unchanged for several years, that she had intermittent mild to moderate pain around the patella of the left knee which was aggravated by walking up inclines, that it was uncomfortable for her to squat and that often when driving she would feel a burning type of pain. Appellant also related that she would have several weeks without pain, but then it would return. She also noted that she had pain after prolonged walking. Appellant further noted that her condition had improved and that she had lost very little time from work while working regular duties. On examination, Dr. McIvor found no effusion, full range of motion, with good ligamentous stability; x-rays were normal, with mild lateral subluxation of the patella. He determined that appellant's condition was permanent and stationary and that it was not serious enough for lateral release. Dr. McIvor stated that she had no restrictions.

On July 28, 1997 the Office referred appellant to Dr. Leonard A. Simpson, an Office medical consultant and an orthopedic surgeon, for a medical evaluation to determine the permanent functional loss of use of the left knee and the date of maximum medical improvement.<sup>8</sup>

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<sup>5</sup> The Board notes that the date of maximum medical improvement was listed as December 22, and did not include a year; however, Dr. Sharma examined appellant on December 22, 1995 and a receipt stamp on his report read February 2, 1996.

<sup>6</sup> Appellant listed her date of birth as March 25, 1959.

<sup>7</sup> The Office approved Dr. McIvor as appellant's treating physician on June 17, 1996.

<sup>8</sup> The Board notes that the Office's July 28, 1997 referral letter to Dr. Simpson referred to a February 10, 1997 report from Dr. Sharma. However, a review of the record did not disclose such a report.

In a medical report dated August 4, 1997, Dr. Simpson stated that he had reviewed appellant's medical records, including Dr. Merkel's August 9, 1993 report wherein he "implies that [appellant] reached maximum medical improvement." He also noted review of Dr. McIvor's reports dated July and November 1996, the latter which discharged appellant from his care and released her to regular duties. He also noted unsigned treatment notes from 1997 indicating that appellant had some right radiculopathic pain. Dr. Simpson also noted review of Dr. Sharma's December 27, 1995 report with reference to the doctor's recommendation of a 13 percent impairment of the lower left extremity. Dr. Simpson stated that a review of the records would indicate that appellant's condition improved since Dr. Sharma's December 1995 examination while she was under Dr. McIvor's care. He then reviewed Dr. McIvor's findings, noting intermittent mild to moderate pain around the patella of the left knee, aggravated by walking up grades. Dr. Simpson then calculated appellant's impairment based on the clinical impression of postchondromalacia patella with normal x-rays which would be the equivalent of crepitation on examination and would be the equivalent of a five percent impairment. Dr. Simpson noted that a value from Table 62 precludes additional values from other tables. He, therefore, recommended an impairment rating of five percent for the lower left extremity.

By decision dated December 29, 1997, the Office granted appellant a schedule award for a five percent permanent disability of her lower left extremity.

The Board finds that appellant has no greater than a five percent permanent disability of her lower left extremity for which she received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act<sup>9</sup> and section 10.304 of the implementing federal regulations,<sup>10</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>11</sup>

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<sup>9</sup> 5 U.S.C. § 8107.

<sup>10</sup> 20 C.F.R. § 10.304.

<sup>11</sup> *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

Dr. Simpson properly relied on Dr. McIvor's findings,<sup>12</sup> noting intermittent mild to moderate pain around the patella of the left knee, aggravated by walking up grades. Dr. Simpson then relied on the A.M.A., *Guides* (fourth edition) to calculate appellant's impairment based on postchondromalacia patella with normal x-rays. He properly referred to the footnote governing Table 62, Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals, which states: "In a patient with a history of direct trauma, a complaint of patellofemoral pain and crepitation on physical examination, but without joint space narrowing on roentgenograms, ... a 5 percent lower-extremity impairment is given." Dr. Simpson also noted that a value from Table 62 precludes additional values from other tables. He, therefore, recommended an impairment rating of five percent for the lower left extremity.<sup>13</sup>

Accordingly, the Board finds that the Office medical consultant correctly applied the A.M.A., *Guides* in determining that appellant had no more than a five percent impairment of the lower left extremity, for which she had received a schedule award.<sup>14</sup>

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<sup>12</sup> See *James E. Jenkins*, 39 ECAB 860 (1988). Further, Chapters 1 and 2 of the A.M.A., *Guides* note that they were prepared to allow one physician to use the raw clinical data of another physician to arrive at a uniform standardized evaluation.

<sup>13</sup> See FECA Bulletin 97-17, March 22, 1996.

<sup>14</sup> The Board notes that Dr. Sharma's evaluation was conducted in accordance with the A.M.A., *Guides* (3d ed. revised) as noted by the Office's referral to him. This report has limited probative value as the fourth edition of the *Guides* was to be used for permanent impairment calculations as of November 1, 1993. FECA Bulletin No. 94-4 (November 1, 1993).

The decision of the Office of Workers' Compensation Programs dated August 4, 1997 is hereby affirmed.<sup>15</sup>

Dated, Washington, D.C.  
November 24, 1999

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>15</sup> The Board notes that subsequent to the Office's August 4, 1997 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).