U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERLYN M. JAMES and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

Docket No. 00-2323; Submitted on the Record;
Issued June 19, 2001

DECISION and ORDER

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

The issue is whether appellant has greater than a two percent permanent impairment of her right lower extremity, for which she has received a schedule award.

The Office of Workers' Compensation Programs accepted that on January 11, 1997 appellant, then a 40-year-old clerk, sustained a right knee contusion and sprain and a right knee meniscal tear, for which she underwent arthroscopic surgery.

On April 3, 1997 magnetic resonance imaging scan of appellant's right knee was reported as revealing a partial tear of the posterior horn of the medial meniscus, joint effusion and chondromalacia patella with mild lateral patellar subluxation and patellar tilt.[1]

On April 12, 1997 appellant underwent arthroscopic surgery of the right knee, which included a partial synovectomy and a partial right medial meniscectomy.

On April 21, 1997 appellant requested a schedule award for permanent impairment of her right lower extremity.

On August 1, 1997 Dr. Robert Fink, a Board-certified orthopedic surgeon, noted that postoperatively, appellant had right quadriceps weakness and required physical therapy.

By letter dated December 15, 1998, the Office advised appellant that the medical evidence of record was insufficient to support a schedule award and it requested that she contact her physician to schedule an impairment determination in accordance with the A.M.A., *Guides*.

[1] The Board notes that patellar subluxation can carry with it a diagnosis based impairment of 7 percent of the lower extremity, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) Chapter 3.2i, diagnosis-based estimates, Table 64, p. 3/85.

By narrative report dated December 28, 1998, Dr. Fink noted that appellant still had joint line tenderness and took medication for right knee pain, had arthritis in the knee and needed a right knee arthroscopic debridement. On an attached CA1303-07 form he indicated that appellant had a 10 percent permanent impairment of her right knee due to "weakness, atrophy, pain or discomfort." No loss of knee range of motion was reported.

Further arthroscopic surgery was authorized on March 8, 1999.

Arthroscopic surgery was performed on June 24, 1999 by Dr. Fink for internal derangement of the right knee, a torn medial meniscus, synovitis and removal of a loose body. During surgery the medial femoral condyle was noted to have some chondromalacia and the anterior medial and anterior lateral compartments were noted to have synovitis. The lateral compartment loose body was removed, the medial meniscal flap tear was removed, debridement was performed and a partial synovectomy was performed.

On November 29, 1999 the Office advised Dr. Fink that the A.M.A., *Guides*, fourth edition, was the Office's standard for impairment rating purposes and advised that he was to determine appellant's permanent impairment "of the right knee meniscus tear due to the employment injury." No inclusion of permanent impairment of the right lower extremity due to any other condition was sought. The Office asked only that Dr. Fink provide the information requested on the attached CA1303-07 form. It did not ask for any information beyond that specifically contained on the form or advise that all factors contributing to appellant's right knee impairment should be detailed with objective and/or subjective findings. The Form CA1303-07 asked for the date of maximum medical improvement, appellant's ranges of motion in degrees, whether ankylosis was present, whether a prosthesis was required for knee stability, whether there was additional impairment of function due to weakness, atrophy, pain or discomfort and what impairment rating he recommended.

By narrative report dated November 29, 1999, Dr. Fink noted that appellant continued to require medical attention for her right knee, that she had some joint line tenderness and arthritis and that she took medication for her right knee pain. He completed Form CA1303-07 opining that appellant had a 10 percent impairment of her right lower extremity due to weakness, atrophy, pain and discomfort. Dr. Fink did not provide any further information than that specifically requested on the form as requested by the Office.

On April 16, 2000 an Office medical adviser, Dr. David M. Smink, an orthopedic surgeon without Board certification, reviewed appellant's medical records, noted her history of right knee arthroscopic debridement, partial medial meniscus and partial synovectomy, indicated that no objective information was available with regard to atrophy, weakness, or joint space narrowing on plain radiographs,[2] and opined that with regard to the A.M.A., *Guides*, fourth edition, Table 64, p. 3/85, diagnosis-based estimates, appellant had a two percent permanent impairment of the right lower extremity on the basis of the diagnosis of partial medial meniscectomy. Dr. Smink noted that without further objective deficits reported, he was unable to recommend any further impairment percentage.

[2] Dr. Smink did not note the presence of appellant's diagnosed right knee arthritis.

On May 11, 2000 the Office granted appellant a schedule award for a two percent permanent impairment of her right lower extremity for the period October 18 to November 27, 1999 for a total of 5.76 weeks of compensation.

The Board finds that this case is not in posture for decision.

A claimant seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[4] Section 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[5]

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[6] However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment. Chapter 3.2 of the A.M.A., *Guides* (fourth edition) provides a grading scheme and procedure for determining impairment of the lower extremity; Chapter 3.2c addresses impairment due to muscle atrophy, Chapter 3.2d addresses weakness, Chapter 3.2g addresses arthritis, Chapter 3.2k addresses peripheral nerve injury, sensory deficits and dysesthesias.[7] The element of pain may serve as the sole basis for determining the degree of impairment for schedule compensation purposes.[8]

The Office's procedure manual provides that the Office should advise any physician evaluating permanent impairment to use the A.M.A., *Guides* and to report all findings of permanent impairment in accordance with those guidelines. The Procedure Manual notes that some objective and subjective impairments, such as pain, atrophy, loss of sensation and scarring, cannot easily be measured by the A.M.A., *Guides*, but that the effects of any such factors should

[3] 5 U.S.C. §§ 8101-8193.

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

[5] 5 U.S.C. § 8107(a). It is thus the claimant's burden of establishing that she sustained a permanent impairment of a scheduled member or function as a result of her employment injury. *See Raymond E. Gwynn*, 35 ECAB 247 (1983) (addressing schedule awards for members of the body that sustained an employment-related permanent impairment); *Philip N.G. Barr*, 33 ECAB 948 (1982) (indicating that the Act provides that a schedule award be payable for a permanent impairment resulting from an employment injury).

[6] *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

[7] A.M.A., *Guides*, pp. 75-93, (fourth edition 1993).

[8] *Paul A. Toms*, 38 ECAB 403 (1987); *Robin L. McClain*, 38 ECAB 398 (1987); *see also* A.M.A., *Guides* Chapter 15, pp. 303-13, (fourth edition 1993).

be explicitly considered along with measurable impairments and correlated as closely as possible with factors set forth in the A.M.A., *Guides*.[9]

In this case, the Office did advise Dr. Fink that the A.M.A., *Guides*, fourth edition, was the Office's standard for impairment rating purposes and it asked that he provide the information requested, based only on the condition of "right knee meniscus tear due to the employment injury," on the attached CA1303-07 form. However, the Office asked only for the information requested on the CA1303-07 and it failed to advise him, as directed by the procedure manual, that *all* findings of impairment affecting the body member should be reported in accordance with the A.M.A., *Guides* guidelines, including the other factors identified as possibly contributing to right lower extremity impairment in this case such as arthritis, chondromalacia of the patella, patellar subluxation, synovitis/synovectomies and due to subjective impairments related to pain, atrophy, deformity, loss of sensation, loss of strength, marked sensitivity to heat or cold and soft tissue damage, which cannot easily be measured by the A.M.A., *Guides* or by objective evidence.[10] The procedure manual states that these factors should also be explicitly considered, including any impairment due to appellant's diagnosed preexisting arthritis and correlated as closely as possible with the factors set forth in the A.M.A., *Guides*. As Dr. Fink's reports supported that appellant also had right knee arthritis, which most likely was contributory to her right lower extremity impairment, the Office should have clearly advised that all factors impairing her right lower extremity should be explicitly considered and supported by objective evidence if possible, including any arthritis-related joint space narrowing as demonstrated by x-ray, in determining her right lower extremity impairment rating.[11] The Office, however, did not properly and fully advise Dr. Fink, in accordance with its own procedure manual, to provide an assessment of all factors affecting appellant's right lower extremity impairment, as directed by the procedure manual, but improperly limited its request to impairment related only to the right medial meniscus tear and meniscectomies, the case must be remanded for further development to ascertain the actual extent of appellant's permanent impairment of her right lower extremity.

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter. 2.808, para. 6(2) (March 1995).

[10] Federal Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter. 2.808, para. 6(a) (March 1995).

[11] *See Philip R. Brueck*, Docket No. 95-1760. (The Board stated, "In its determination of the percentage of permanent impairment … the Office should take into account [the] preexisting impairment to the left ankle, even though appellant's injury was not accepted for an ankle condition. It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included…. The Act does not provide for a schedule award for an impairment of the knee, but rather of the leg. All impairments of the leg should be considered in determining appellant's entitlement to a schedule award." *See also Raymond E. Gwynn*, *supra* note 5 and cases cited therein. In *Gwynn* the Board found that preexisting knee conditions/impairments arthritis had to be considered along with present knee conditions and impairments cartilage erosion and meniscal tear in determining his degree of impairment for schedule award purposes; *see also Pedro M. De Leon*, 35 ECAB 487 (1983) (impairment rating for accepted knee contusion injury must include consideration of preexisting degenerative knee changes).

Consequently, the May 11, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
June 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member