

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of LILLIAN YVONNE MOORE and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Washington, DC

*Docket No. 03-690; Submitted on the Record;  
Issued April 10, 2003*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant sustained an impairment entitling her to a schedule award of the lower extremity.

On May 29, 1990 appellant, then a 43-year-old technician, filed a claim for traumatic injury alleging that on May 23, 1990 she injured her back when she fell from an office chair.

The Office of Workers' Compensation Programs accepted the claim for a lumbar strain while in the performance of duty on May 23, 1990 and subsequently expanded the accepted injuries to include permanent aggravation of degenerative disc disease with left leg radiculopathy. The Office also accepted as consequential injuries a left torn medial meniscus, internal derangement of the left knee and chondromalacia patella in both knees.

Appellant then filed a claim for a schedule award.

In a report dated June 21, 2001, Dr. Hampton J. Jackson, Jr., appellant's treating physician and a Board-certified orthopedic surgeon, stated that appellant had reached maximum medical improvement based on her May 23, 1990 work-related injury at that time. Dr. Jackson relied on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) in finding a 5 percent loss of function of the left lower extremity due to sensory deficit and pain, and an additional 20 percent impairment and loss of function due to loss of strength. He also determined that her left leg limp resulted in a two percent whole person impairment and that her left thigh atrophy resulted in an additional two percent whole person impairment. He further found that appellant's patella damage resulted in an eight percent impairment of the left lower extremity.

In a report dated November 21, 2001, an Office medical adviser stated that "there was no basis for a permanent partial impairment," because there was no meniscus tear of the left knee and that as far as appellant's back and radiculopathy, please see the magnetic resonance imaging (MRI) scans which were normal.

In a report dated January 31, 2002, Dr. Mervel El-Assal, a specialist in physical medicine and rehabilitation, reviewed an electromyography (EMG) test taken that day and noted that “findings of abnormal increased insertional activity and giant polyphasic motor unit action potential on left L5 myotome.” She stated that appellant had “left radiculopathy and chronic moderately severe partial denervation.”

In a report dated February 21, 2002, Dr. Jackson stated that appellant had chronic lumbar radiculopathy confirmed by repeat EMG test. He added: “It shows she has partial denervation of the L5 root of the left side.”

On April 4, 2002 the Office notified appellant that she was to be referred to an impartial medical examiner to resolve a conflict in medical opinion in her case.

By letter dated June 25, 2002, the Office referred appellant to Dr. Easton L. Manderson, an impartial medical examiner and a Board-certified orthopedic surgeon, for an impartial medical examination including an evaluation of appellant’s accepted injuries to determine impairment ratings. The questions sent to the impartial medical examiner were whether appellant’s left lower extremity impairment was work related, if so, what was the percentage of impairment, whether appellant has reached maximum medical improvement, and if so, when.

In a report dated June 26, 2002, Dr. Manderson stated that he examined appellant that day and diagnosed chronic lumbar strain, herniated lumbar disc suggesting L5 radiculopathy and L4-5 disc disease. He also noted that appellant had full range of motion of both knees, that her left knee strength was rated as 4 by 5, that there was no swelling and no evidence of atrophy in either knee. Neurological examination revealed weak dorsiflexion of the left ankle and great toe with decreased sensation to palpitation along the left leg and great toe.

In a report dated June 29, 2002, Dr. Manderson noted the reports he had reviewed. With respect to appellant’s EMG test, he stated:

“The[re] was only one formal report of an EMG test that was done on October 6, 1997. This was an incomplete study, but according to the performer, Dr. Daniel Ignacio, he thought that the findings were consistent with a chronic left L5 radiculopathy which would suggest pathology at the L4-5 interval. However a nerve conduction study was not done because of technical difficulties according to Dr. Ignacio.”

Dr. Manderson proceeded to rate appellant with a 13 percent whole person impairment based on her lumbosacral spine injury.

In an addendum report dated July 18, 2002, Dr. Manderson stated that he reviewed a July 11, 2002 lower back magnetic resonance imaging (MRI) scan and reported findings. He stated that no herniated disc was identified, that mild disc bulging was found at L3-4, L4-5 and L5-S1 and that moderate disc narrowing was found at L5-S1. He stated that appellant’s pain was probably due to aggravated disc disease. Regarding appellant’s chondromalacia, Dr. Manderson stated that an MRI scan revealed mild erosions of the patellar cartilage in the left knee and that it was possible that it “may have been aggravated on May 23, 1990.” He also noted that appellant’s right knee MRI scan revealed loss of cartilage and thus “this knee has moderate

chondromalacia of the patella ... which could represent trauma, possibly from the episodes of recurrent falling.” Regarding appellant’s meniscus, Dr. Manderson stated that the MRI scan “does not show any tear of the medial meniscus,” but that he observed a tear of the lateral meniscus and chondromalacia changes of the lateral compartment. He concluded that the “the acceptance of a torn medial meniscus is improper.” Dr. Manderson stated that appellant had reached maximum medical improvement 12 months after the date of injury.<sup>1</sup>

In a report dated October 17, 2002, the Office medical adviser reviewed the medical record and found that appellant’s lumbar sprain and disc disease resulted in a zero percent impairment rating based on a negative MRI scan finding,<sup>2</sup> that appellant had a zero percent impairment based on her left knee meniscus tear, noting that there was no medical evidence to support that a tear existed and that regarding the diagnostic chondromalacia, he noted that there was no objective x-ray evidence to support any space narrowing and no crepitation upon examination to support an impairment.<sup>3</sup> The Office medical adviser also noted that the Office “may ... consider electromyography (EMG) test and nerve conduction studies (NCS) by an independent examiner.”

By decision dated November 15, 2002, the Office denied appellant’s claim for a schedule award.

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

Section 8123 of the Federal Employees’ Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.<sup>4</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>5</sup> However, in a situation where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or

---

<sup>1</sup> In a report dated July 12, 2002, Dr. Louis D. Napoli, Board-certified in radiology, reviewed x-rays taken on July 11, 2002 and noted that appellant’s left foot and right ankle were normal. In a report dated July 14, 2002, Dr. Robert L. Hamm, Board-certified in radiology, noted that a left knee MRI scan revealed no meniscal tear. However, he noted mild erosion of the patella cartilage which he opined represented mild chondromalacia. Dr. Hamm also noted that a lumbar spine MRI scan taken on July 11, 2002 revealed no herniated disc, but did reveal mild disc bulging at L3-4, L4-5 and L5-S1, and moderate disc narrowing at L5-S1.

<sup>2</sup> A.M.A., *Guides*, Table 17-33 at 546 (5<sup>th</sup> ed. 2001).

<sup>3</sup> *Id.* at Table 17-31 at 544.

<sup>4</sup> 5 U.S.C. § 8123; *see Charles S. Hamilton*, 52 ECAB \_\_\_\_ (Docket No. 99-1792, issued October 13, 2000).

<sup>5</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB \_\_\_\_ (Docket No. 00-743, issued February 8, 2001).

elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.<sup>6</sup>

In this case, the Office referred appellant, her medical record and statement of accepted facts to Dr. Manderson for an impartial medical examination. In his report, Dr. Manderson stated that the file included only one electromyography test dated October 6, 1997, and that there was no nerve conduction study performed. However, the record includes a January 31, 2002 EMG test performed by Dr. El-Assal who noted abnormal findings. Further, the statement of accepted facts included appellant's consequential injuries of chondromalacia patella in both knees. Dr. Manderson, in his July 18, 2002 report, appears to rediagnose appellant with bilateral patella chondromalacia, but without evaluating this condition for an impairment. Dr. Manderson also noted that the "the acceptance of a torn medial meniscus is improper."

Although the Office medical adviser extrapolated the impartial medical examiner's data to determine that appellant had no ratable impairment, his reports were flawed and thus did not provide an appropriate basis for the Office medical adviser's determination. The impartial medical examiner did not review the January 31, 2002 EMG test, he made no finding regarding the impairment of appellant's bilateral patella chondromalacia,<sup>7</sup> and he essentially refuted the Office's acceptance of appellant's left knee meniscus tear. For these reasons, the report of the impartial medical examiner is nonresponsive to the Office's questions and renders his report of diminished probative value.<sup>8</sup> As the conflict in medical opinion has not been resolved, this case must be remanded for referral to another impartial medical examiner for a thorough and fully rationalized medical opinion.

---

<sup>6</sup> *Margaret M. Gilmore*, 47 ECAB 718 (1996).

<sup>7</sup> The impartial medical examiner opined that appellant's patella condition may have been work related. However, the Office previously accepted this condition.

<sup>8</sup> *See Harry T. Mosier*, 49 ECAB 688 (1998).

Consequently, the decision of the Office of Workers' Compensation Programs dated November 15, 2002 is hereby set aside and the case is remanded to the Office for further development in accordance with this decision and order.

Dated, Washington, DC  
April 10, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member