

**United States Department of Labor
Employee's Compensation Appeals Board**

DAWN P. PEZZANO, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 04-1191
Issued: August 26, 2004**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 31, 2004 appellant filed a timely appeal of the June 16, 2003 merit decision of the Office of Workers' Compensation Programs, which found that she had no more than a three percent impairment of the left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue on appeal is whether appellant has more than a three percent impairment of the left lower extremity for which she received a schedule award.

FACTUAL HISTORY

On October 1, 1999 appellant, then a 35-year-old letter carrier, filed a claim alleging that on that day she was walking up steps while delivering mail and felt her left knee snap. The Office accepted appellant's claim for a left knee strain and on January 17, 2001 arthroscopic surgery was performed. Appellant did not stop work. Appropriate compensation benefits were paid.

Dr. Roy B. Friedenthal, an attending Board-certified orthopedist, noted treating appellant from November 12, 1999 to January 28, 2000 for acute left knee pain and diagnosed traumatic chondromalacia of the left knee which developed in October 1999 as a result of performing her duties as a letter carrier. Also submitted were reports from Dr. Larry S. Rosenberg, a Board-certified orthopedist, dated March 10 to October 3, 2000. He noted a history of appellant's work-related left knee injury and diagnosed patella maltracking leading to patella overload and pain. He noted a magnetic resonance imaging (MRI) scan was performed which revealed chondromalacia patellae. On November 6, 2000 Dr. William G. DeLong, Jr., a Board-certified orthopedist, diagnosed osteoarthritis of the patellofemoral joint of the left knee and recommended arthroscopic surgery.

In a fitness-for-duty examination dated August 1, 2000, Dr. John R. Duda, a Board-certified orthopedist, diagnosed a left knee strain which occurred on October 1, 1999 while appellant was working. He noted evidence of chondromalacia patella which was an independent and unrelated condition to the accepted work-related injury of October 1, 1999. Dr. Duda noted that appellant's work injury had resolved and advised that she could return to work with restrictions which were caused by the nonwork-related condition of chondromalacia. In a note dated December 28, 2000, an Office medical adviser concurred with Dr. Duda's determination that appellant's left knee sprain had resolved and the existing chondromalacia of the left patella was not related to the October 1, 1999 accepted work-related injury.

On March 6, 2001 appellant was referred for a second opinion physician for evaluation. In a report dated March 15, 2001, Dr. Gregory S. Maslow, a Board-certified orthopedist, noted that appellant sustained traumatic chondromalacia of the patellofemoral joint which was causally related to her employment injury of October 1, 1999. He recommended a patellar realignment procedure to the left knee and opined that this surgery was partially a result of the injury she sustained on October 1, 1999.

On April 12, 2001 the Office authorized arthroscopic surgery on appellant's left knee. In a report dated May 25, 2001, Dr. DeLong noted performing surgical arthroscopy, chondroplasty of the patellofemoral joint and excision of plica of the left knee and diagnosed plica synovialis and degenerative joint disease of the patellofemoral joint.¹ On September 5, 2001 Dr. DeLong returned appellant to limited duty.

On April 3, 2002 appellant filed a claim for a schedule award. She submitted a report from Dr. David Weiss, an osteopath, dated January 31, 2002, who indicated that appellant reached maximum medical improvement on January 28, 2002. He opined that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*), appellant sustained an eight percent impairment of

¹ On June 24, 2001 appellant file a Form CA-2a, notice of recurrence of disability. She noted that she experienced left knee pain causally related to her work-related injury of October 1, 1999. In a decision dated June 30, 2001, the Office accepted that appellant sustained a recurrence of disability.

² A.M.A., *Guides* (5th ed. 2001).

the left lower extremity. Dr. Weiss noted a five percent impairment for pain/crepitation of the patellofemoral joint³ and a three percent impairment for pain.⁴

In a memorandum dated May 27, 2002, the Office referred the medical evidence to an Office medical adviser for evaluation as to the extent of permanent partial impairment of the left lower extremity in accordance with the A.M.A., *Guides*. The Office medical adviser determined that appellant sustained a three percent impairment of the left lower extremity.⁵

In a decision dated June 13, 2002, the Office granted appellant a schedule award for a three percent impairment of the left lower extremity. The schedule award was granted for the period May 27 to July 26, 2002.

In a letter dated July 2, 2002, appellant, through her attorney, requested a hearing before an Office hearing representative. The hearing was held on March 11, 2003.

In a decision dated June 16, 2003, the hearing representative affirmed the June 13, 2002 schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁶ and its implementing regulation⁷ 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. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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 standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

ANALYSIS

Appellant submitted a report from Dr. Weiss dated January 31, 2002. The Board has carefully reviewed his medical report and notes that the physician did not adequately explain how his determination of impairment was reached in accordance with the relevant standards of the A.M.A., *Guides*.⁸ Dr. Weiss noted upon physical examination of the left knee that range of motion was full to 140 degrees, there was inferior patellar pole tenderness, crepitation was noted, and tenderness was noted along the medial joint line and the medial femoral condyle. He

³ See Table 17-31, page 544 (5th ed. 2001) (A.M.A., *Guides*).

⁴ See Table 18-1, page 574 (5th ed. 2001) (A.M.A., *Guides*).

⁵ *Id.*

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (1999).

⁸ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

allowed a five percent impairment for pain/crepitation of the patellofemoral joint under Table 17-31 at page 544 of the A.M.A., *Guides*. However, this rating must be supported by an x-ray, which Dr. Weiss did not provide.⁹ He merely noted that the impairment could be best rated based on patellofemoral pain/crepitation and pain-related impairment. The Board has held that an attending physician's report is of diminished probative value where the A.M.A., *Guides* are not properly followed.¹⁰ Dr. Weiss properly determined that appellant experienced a pain-related impairment of three percent under Figure 18-1 and 18-2, page 574-75 of the A.M.A., *Guides*, which provides that if the pain-related impairment appears to increase the burden of the individual's condition substantially then impairment would be increased by three percent. In this instance, Dr. Weiss supported this finding by noting that activities of daily living exacerbated appellant's pain including her work as a letter carrier, performing household duties of yard work, prolonged standing, walking and climbing stairs and driving a vehicle.

The Office medical adviser properly utilized the findings of Dr. Weiss and correlated them to the specific provisions in the A.M.A., *Guides*, fifth edition to determine the impairment rating. The medical adviser allowed a three percent impairment of the left lower extremity due to pain-related impairment.¹¹ The Office medical adviser noted that Dr. Weiss' determination that appellant sustained a five percent impairment for pain/crepitation of the patellofemoral under Table 17-31 at page 544 of the A.M.A., *Guides* was incorrect because the rating was not supported by an x-ray as required by the A.M.A., *Guides*.

The Office medical adviser properly applied the A.M.A., *Guides* to the information provided by Dr. Weiss and made an impairment rating of three percent for the left lower extremity. This evaluation conforms to the A.M.A., *Guides* and the medical evidence does not establish that appellant has more than a three percent impairment of the left lower extremity.

CONCLUSION

The Board finds that the Office properly determined that appellant had no more than a three percent permanent impairment of the left lower extremity for which she received a schedule award.

⁹ See page 544, Chapter 17.2h, Arthritis, which requires that the arthritis impairment rating for the patellofemoral joint be supported by a "sunrise view" x-ray taken at 40 degrees flexion or on a true lateral view (5th ed. 2001) (A.M.A., *Guides*); see also *Thomas L. Iverson*, 50 ECAB 515 (1999).

¹⁰ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

¹¹ See A.M.A., *Guides*, *supra* note 2 at 544.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member