

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

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| <b>LADRESTA J. McNEAL, Appellant</b>                              | ) |                                  |
|   | ) |                                  |
| <b>and</b>  | ) | <b>Docket No. 04-1066</b>        |
|   | ) | <b>Issued: December 27, 2004</b> |
|   | ) |                                  |
| <b>U.S. POSTAL SERVICE, POST OFFICE,<br/>Mobile, AL, Employer</b> | ) |                                  |
|   | ) |                                  |

*Appearances:*  
*Ladresta J. McNeal, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On March 9, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated September 11 and December 16, 2003 adjudicating a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this case.

**ISSUE**

The issue is whether appellant has more than a seven percent permanent impairment to the right leg for which she received a schedule award.

**FACTUAL HISTORY**

On June 2, 1998 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim alleging that on that date she injured her right knee while in the performance of duty. On June 24, 1999 the Office accepted appellant's claim for a cyst and contusion of the right knee and a torn right medial meniscus, and paid appropriate benefits. The Office also authorized surgery performed on June 30, 1999. Appellant returned to light duty on August 5, 1999.

In a report dated November 21, 2000, Dr. Robert B. McGinley, a Board-certified orthopedic surgeon, stated that appellant underwent arthroscopic surgery on June 30, 1999 which revealed no intra-articular abnormality. Appellant remained under his care for patella tendinitis. In a report dated that same day, an Office medical adviser reviewed Dr. McGinley's report and determined that appellant had a four percent right lower extremity impairment and that the date of medical maximum medical improvement was November 21, 2000. He found that, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4<sup>th</sup> ed. 1993), Table 20, page 151, appellant had a Class 2 pain of 25 percent, and, based on Table 68, page 89, she had a 17 percent impairment due to sensory deficit of the sciatic nerve. Multiplying 25 percent times 17 percent equaled 4.25 percent which he rounded to 4 percent impairment.

On July 2, 2001 appellant filed a claim for a schedule award. On July 11, 2001 Dr. George F. Chimento, appellant's treating physician and a Board-certified orthopedic surgeon, stated that a June 20, 2001 magnetic resonance imaging (MRI) scan demonstrated no meniscal pathology, and diagnosed patellofemoral pain syndrome/chondromalacia and degenerative joint disease. He recommended physical therapy to strengthen the quadriceps muscles and to alleviate pain. Dr. Chimento also recommended a functional capacity evaluation following physical therapy to determine job limitations. By decision dated July 24, 2001, the Office awarded appellant a four percent schedule award for permanent impairment of the right leg. The period of award ran from November 21, 2000 to February 9, 2001.

On January 23, 2002 Dr. Chimento requested authorization for right knee arthroscopic surgery which the Office approved on February 1, 2002. On March 7, 2002 Dr. Chimento performed arthroscopic lateral retinacular release on appellant's right knee and she returned to light duty on May 29, 2002.

On July 16, 2002 Dr. Chimento stated that appellant had reached maximum medical improvement noting that she still complained of right knee pain and was mildly tender over the patella tendon. However, he noted that due to the loss of articular cartilage of the patella observed during arthroscopic surgery she would benefit from permanent duty restrictions. Dr. Chimento again recommended a functional capacity evaluation to determine the amount of walking and climbing she could tolerate. In a form report dated July 31, 2002, he stated that appellant had reached maximum medical improvement on that day, opined that she had a two percent whole body impairment and placed her on permanent restrictions.

On September 9, 2002 appellant requested an additional schedule award. On November 12, 2002 the Office requested Dr. Chimento to provide an impairment rating for appellant using the A.M.A., *Guides*.<sup>1</sup> In a letter dated November 25, 2002, Dr. Chimento stated that appellant reached maximum medical improvement on July 31, 2002 that she had chondromalacia of the patella and mild medial compartment osteoarthritis of the right knee, and that, based on the A.M.A., *Guides*, she had a 12 percent impairment of the right lower extremity. In an attached form dated November 22, 2002, Dr. Chimento noted that appellant had 120 degrees of retained flexion based on an average range of 150 degrees and 0 degrees of retained

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

extension based on an average of 0 degrees. He also found that she had a 12 percent impairment due to weakness, atrophy, pain or discomfort. The Office medical adviser, on January 6, 2003, stated that Dr. Chimento's report was insufficient because the physician did not provide an impairment rating based on derangement of the previously accepted right torn meniscus. He added that an impairment rating for osteoarthritis required radiological observation as required by the A.M.A., *Guides*. On June 12, 2003 the Office requested that Dr. Chimento comment on the Office medical adviser's report.

In a report dated July 14, 2003, Dr. Chimento stated that appellant had a three millimeter cartilage interval of her knee as revealed by x-rays which, based on Table 17-31, page 544, of the A.M.A., *Guides* was equal to a seven percent lower extremity impairment. He also noted that she had patellofemoral pain and crepitation upon examination but without joint space narrowing. Dr. Chimento referenced the footnote in Table 17-31<sup>2</sup> to support an additional 5 percent lower extremity impairment for pain without joint space narrowing which, when combined with her impairment for loss of cartilage interval, equaled a 12 percent impairment of the lower extremity.

On July 31, 2003 the Office medical adviser, upon review of Dr. Chimento's report, noted that the doctor properly used x-rays findings of a three millimeter joint space narrowing to provide a seven percent permanent impairment of the right lower extremity as per Table 17-31, page 544 of the A.M.A., *Guides*. He then noted that Dr. Chimento recommended an additional five percent impairment based on the footnote to Table 17-31 when there is pain and a history of trauma, but without joint space narrowing. The Office medical adviser noted that Dr. Chimento had already provided impairment rating for joint space narrowing and thus recommended only the seven percent impairment of the right lower extremity.

By decision dated September 11, 2003, the Office awarded appellant an additional three percent impairment to the prior award of four percent for a total of a seven percent impairment rating of the right leg. The date of maximum medical improvement was July 31, 2002, and the period of award ran for 8.64 weeks, from September 10 to November 9, 2002.

On November 3, 2003 appellant requested reconsideration. In support of her request, appellant submitted an October 14, 2003 report from Dr. Chimento where he stated that the knee cartilage interval and the patellofemoral cartilage interval are separate entities and implicitly can be rated separately. On December 15, 2003 the Office medical adviser disagreed with Dr. Chimento's October 14, 2003 report noting that appellant could not receive an impairment rating for both joint space narrowing and no joint space narrowing.

By decision dated December 16, 2003, the Office denied review of appellant's request for reconsideration.<sup>3</sup>

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<sup>2</sup> The footnote in Table 17-31 reads: "In an individual with a history of direct trauma, a complaint of patellofemoral pain and crepitation on physical examination, but without joint space narrowing on x-rays, a two percent whole person or five percent lower extremity impairment is given."

<sup>3</sup> By decision dated July 21, 2003, the Office terminated appellant's wage-loss compensation benefits as her position as a modified city carrier fairly and reasonably reflected her wage-earning capacity. This decision has not been appealed.

## LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulation<sup>5</sup> sets 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*, (5<sup>th</sup> ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>6</sup>

## ANALYSIS

On June 24, 1999 the Office accepted that appellant's cyst, right knee contusion and a torn right medial meniscus were work related and, on July 24, 2001, awarded appellant a four percent schedule award for permanent impairment of the right leg.

Appellant then requested an additional schedule award and submitted a July 14, 2003 and report from Dr. Chimento, her treating physician, who stated that x-rays revealed a three millimeter joint space narrowing which based on the A.M.A., *Guides*, resulted in a seven percent impairment of the lower extremity under Table 17-31.<sup>7</sup> Dr. Chimento also rated appellant with five percent impairment for a patellofemoral pain end crepitation on examination and cited the footnote in Table 17-31. The Office medical adviser, in a July 31, 2003 report, agreed with the seven percent assessment by Dr. Chimento based on a three millimeter cartilage interval<sup>8</sup> but disagreed regarding the five percent figure. Subsequently, Dr. Chimento opined that both ratings were proper because the knee cartilage interval and the patellofemoral cartilage interval were separate entities and implicitly could be rated separately. The Office medical adviser, in a December 15, 2003 report, disagreed, noting that appellant could not receive an impairment rating for both joint space narrowing and no joint space narrowing. The Board finds that the Office medical adviser properly calculated the impairment. Table 17-31 clearly allows seven percent impairment of the lower extremity and for a three millimeter cartilage interval.<sup>9</sup> In attributing an additional five percent, Dr. Chimento cited the footnote to Table 17-31 and opined that attributing an impairment to the medial compartment and an impairment to the patellofemoral interval were possible because they were separate entities. However, the text of the footnote states, "In an individual with a history of direct trauma, the complaints of

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> See 20 C.F.R. § 10.404; *Jacqueline S. Harris*, 54 ECAB \_\_\_\_ (Docket No. 02-303, issued October 4, 2002).

<sup>7</sup> A.M.A., *Guides* 544, Table 17-31.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

patellofemoral pain and crepitation on physical examination, but *without joint narrowing on x-rays*, a two percent whole person or five percent lower extremity impairment is given.”<sup>10</sup> (Emphasis added.) There is no basis in the footnote to Table 17-31 to attribute impairment for both narrowing of the medial compartment and nonnarrowing of the patellofemoral joint space. Dr. Chimento noted a narrowing of the cartilage interval of the knee of three millimeters, but the footnote simply states “without joint space narrowing” which supports the Office medical adviser’s opinion that either the knee has joint space narrowing on x-rays or not, and that based on Dr. Chimento’s July 14, 2003 report, appellant has such a space narrowing and is entitled to an appropriate schedule award.

The weight of the medical evidence of record establishing that appellant has a seven percent impairment to the right leg is accorded to the Office medical adviser and his interpretation of Table 17-31. The Board finds Dr. Chimento’s rationale for utilizing the footnote to Table 17-31 to add an additional five percent impairment based on x-ray interpretation to be inconsistent with the term “without joint space narrowing.” Since appellant has only established entitlement to a seven percent permanent impairment based on joint space narrowing on x-ray, she is not entitled to a greater award than that previously granted by the Office.

### CONCLUSION

The Board finds that appellant has not established that she is entitled to no more than a seven percent permanent impairment of the right leg.

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<sup>10</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 16 and September 11, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 27, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member