United States Department of Labor
Employees' Compensation Appeals Board

JOESETTE C. BOBO, Appellant	)	
and	)	**Docket No. 04-1640**
	)	**Issued: December 9, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Sharon Hill, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On June 15, 2004 appellant filed a timely appeal from the January 26, 2004 merit decision of the Office of Workers' Compensation Programs, which denied an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the denial.

ISSUE

The issue is whether appellant has more than a two percent permanent impairment of her left lower extremity.

FACTUAL HISTORY

On the prior appeal of this case,[1] the Board remanded the case for further development. Briefly, appellant, a distribution window clerk, injured her knees in the performance of duty. The Office accepted her claim for bilateral meniscus tears. She underwent surgery to correct her

[1] Docket No. 01-12 (issued September 4, 2001).

left knee condition and received a schedule award for a two percent permanent impairment of her left lower extremity. A conflict in medical opinion arose on the extent of her impairment, so the Office obtained a June 10, 1999 opinion from Dr. E. Balasubramanian, a Board-certified orthopedic surgeon selected to serve as the impartial medical specialist,[2] who did not describe the meniscectomy as partial or total, offered no impairment rating and made no reference to the applicable edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The Board instructed the Office to obtain a supplemental report from Dr. Balasubramanian.

On remand, the Office referred appellant to a different physician for a new impartial medical evaluation. In a decision dated July 22, 2002, an Office hearing representative found that the Office improperly obtained this physician's report and remanded the case for a supplemental report from Dr. Balasubramanian.

On December 3, 2002 Dr. Balasubramanian examined appellant for a reevaluation of her knees. He noted bilateral knee complaints and findings on physical examination:

> "Examination today reveals that her gait is normal. She is able to toe walk, heel walk, partially squat and get up without difficulty. She is able to hop in place, and she is able to do single foot toe raises. Examination of the knees reveals that she has no knee effusion. She has no synovitis in the knee. Examination of both knees reveals that there is no evidence of any meniscal signs. She has diffuse tenderness but no definite meniscal signs. There is no ligamentous laxity. The range of motion examination reveals that bilaterally the flexion is possible up to 110 degrees and extension is possible to minus 4 degrees. Both are indicating that there is no loss of range of motion. The quadriceps measured 5 inches above the patellar pole, measure bilaterally 20.5 inches, and the calf measured 4 inches below the tibial tubercle, bilaterally measures 16 inches. The knee circumference is bilaterally 15 inches at the mid level."

Dr. Balasubramanian then evaluated appellant's impairment:

> "I reviewed the records that you sent along, and I reviewed the questionnaire. Upon review of the physical findings with the A.M.A., *Guides* (5th ed.), she does not have any restriction in range of motion of the knee. [T]able 17/10 indicates that it is only impaired if flexion is less than 110 and there is flexion contracture. She does not have either of those. She does not have any weakness in … either extremity as shown by the lack of atrophy. This is from [T]able 17/08, and she does not qualify for that. She does not have any varus or valgus alignment of the knee. From the review of the medical records, it appears that she had a partial meniscectomy on the left knee, and this qualifies for four percent impairment and two percent lower extremity impairment as per [T]able 17/33."

[2] 5 U.S.C. § 8123(a) (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).

An Office medical adviser reviewed Dr. Balasubramanian's rating and reported that he had appropriately applied the A.M.A., *Guides*.

In a decision dated January 24, 2003, the Office denied an additional schedule award. The Office found that the weight of the medical evidence rested with Dr. Balasubramanian and established no more than a two percent permanent impairment of appellant's left lower extremity.

Appellant requested an oral hearing before an Office hearing representative, which was held on August 28, 2003. She submitted diagnostic studies of left and right knees from August 8, 2003 and a September 4, 2003 treatment note indicating mild degenerative arthritis in both knees, though diagnostic testing "did not show anything acute."

In a decision dated January 26, 2004, the Office hearing representative affirmed the denial of an additional schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[3] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[4]

When 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.[5]

ANALYSIS

The Office provided Dr. Balasubramanian appellant's entire case file and a statement of accepted facts so that the impartial medical specialist would have a complete and accurate factual background. Dr. Balasubramanian related appellant's complaints and his findings on physical examination. Referring to tables in the fifth edition of the A.M.A., *Guides*, he noted no loss of motion, no atrophy (and therefore no weakness) and no varus or valgus deformity. Using the diagnosis-based estimates in Table 17-33, page 546, he reported that appellant had a two percent lower extremity impairment due to a partial meniscectomy on the left. His findings indicated no impairment on the right.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

[5] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

The Board finds that Dr. Balasubramanian's opinion is based on a proper background and is sufficiently well reasoned, having appropriately applied the A.M.A., *Guides*, that it is accorded special weight in resolving the conflict that arose in this case. The Board will affirm the Office's January 26, 2004 decision.[6]

CONCLUSION

The Board finds that the weight of the medical opinion evidence, as represented by the opinion of the impartial medical specialist, establishes that appellant has no more than a two percent permanent impairment of her left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[6] On appeal appellant argues that Dr. Balasubramanian should have performed manual muscle testing. The A.M.A., *Guides* describes the difficulties in obtaining valid results from such testing. A.M.A., *Guides* at 531. In this case the issue has been well addressed. An Office medical adviser noted the difficulties in basing a schedule award on voluntary muscle impairment. He reported on September 8, 1998 that appellant's symptoms were totally out of proportion with her objective findings, according to one physician, and that this was confirmed by a functional capacity evaluation on March 15, 1996, which was deemed invalid for marked inconsistencies. The Office medical adviser also noted that the grade of weakness given by Dr. David Weiss, appellant's physician, was inconsistent with supporting her own weight and working. The Office medical adviser indicated that appellant was not a good candidate for manual muscle testing. The decision of whether diagnostic or examination criteria better describe the impairment of a specific individual is left to the evaluating physician, in this case the impartial medical specialist. *Id*. at 548; *see id*. at 526 (Table 17-2) (an impairment derived from manual muscle testing may not be combined with an impairment derived from a diagnosis-based estimate).