United States Department of Labor
Employees' Compensation Appeals Board

STELLA M. MADERO, Appellant	)	
and	)	**Docket No. 04-1927**
	)	**Issued: December 20, 2004**
DEPARTMENT OF THE ARMY, MARINE CORPS LOGISTICS BASE, Barstow, CA, Employer	)	

Appearances:
Stella M. Madero, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 29, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 3, 2004 which granted a schedule award for a three percent impairment of her left leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she has more than a three percent permanent impairment of her left leg for which she received a schedule award.

FACTUAL HISTORY

On March 11, 2002 appellant, then a 37-year-old contract specialist, filed a traumatic injury claim alleging that she sustained a lower extremity injury when she fell at work on February 13, 2002. The Office accepted that she sustained bilateral knee strains, a meniscus tear of the left knee, bilateral foot contusions, and a fracture of the fifth metatarsal of the left foot.

Appellant stopped work on February 13, 2002 and returned to limited-duty work for the employing establishment on February 28, 2002. She received appropriate compensation for periods of disability. On October 1, 2002 appellant underwent a synovectomy and an arthroscopic partial medial meniscectomy of her left knee which were authorized by the Office.[1]

In a report dated May 7, 2003, Dr. Phillip R. Kiplinger, an attending Board-certified orthopedic surgeon, stated that appellant reported that she no longer had pain in her knees and was able to go up and down stairs without pain. He noted that neither knee had any swelling or erythematous change and that the cruciate and collateral ligaments of both knees were stable. Dr. Kiplinger indicated that appellant had 125 degrees of flexion in both knees and that x-ray testing of her left knee revealed no joint line narrowing, calcifications, loose bodies or bony abnormalities. He stated that she had no significant loss of motion, atrophy, strength loss, or ligamentous instability of either lower extremity and that her condition was permanent and stationary.

In October 2003 appellant filed a claim for a schedule award due to her employment injuries. The Office referred appellant to Dr. Laurence Meltzer, a Board-certified orthopedic surgeon, for an examination and opinion on the extent of the permanent impairment of her lower extremities.

In a report dated November 19, 2003, Dr. Meltzer stated that appellant reported that she occasionally had some pain in her left knee and left foot. He noted on examination that there was no evidence of swelling, redness, increased heat, atrophy or deformity in the lower extremities. Dr. Meltzer stated that there was no collateral, cruciate or rotatory instability on either knee but that there was some popping under the patella of the left knee with flexion and extension which was unlikely to be due to the employment injury. He indicated that appellant exhibited flexion to 140 degrees in both knees and extension to 0 degrees in both knees.[2] Dr. Meltzer noted that there was some tenderness over the base of the fifth metatarsal on the left and that the sensory and motor strength examinations of the lower extremities were normal. He indicated that appellant had "mild early chondromalacia" which was most likely due to her weight. Dr. Meltzer noted that appellant did not have any work restrictions and he did not provide any assessment of the extent of her permanent impairment.

Dr. Meltzer's report was reviewed by Dr. Leonard A. Simpson, a Board-certified orthopedic surgeon and Office medical consultant. In a report dated March 15, 2004, Dr. Simpson concluded that appellant sustained a three percent permanent impairment of

[1] After a period of total disability related to the surgery, appellant returned to the employing establishment on January 8, 2003 in a limited-duty position.

[2] In an attached form, he indicated that appellant had flexion to 150 degrees in both knees and extension to 0 degrees in both knees. He further noted that she had motion to 30 degrees in both interphalangeal joints, dorisflexion to 50 degrees in both metacarpal interphalangeal joints, and plantar flexion to 50 degrees in both metacarpal interphalangeal joints.

her left leg. He noted that appellant had no subjective complaints or objective findings in her right leg and therefore did not have any permanent impairment of that leg. Dr. Simpson stated:

> "With regard to the left knee, the individual underwent a partial medial meniscectomy, which would be assessed a two percent impairment as per Table 17-33. There is some evidence of mild chondromalacia patella on the left, but the records do not indicate any causal relationship between this chondromalacia patella and the work-accepted injury or its sequelae.
>
> "In regard to the left foot, the claimant presents with a healed left fifth metatarsal fracture, with slight tenderness and pain described as 'mild.' This would be graded a maximal [G]rade IV as per the Grading Scheme (Table 16-10, [p]age 482, fifth edition of the [A.M.A.,] *Guides*). This would be a 25 percent grade of a maximal 5 percent for branches of the lateral plantar nerve, equivalent to a rounded-off 1 percent impairment. There was no loss of range of motion for a zero percent impairment. The records do not indicate any atrophy or weakness for a zero percent impairment. The two combined with the one would be equivalent to a three percent impairment of the left lower extremity or leg."

By decision dated May 3, 2004, the Office granted appellant a schedule award for a three percent permanent impairment of her left leg.

LEGAL PRECEDENT

An employee 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] including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.[5] The schedule award provision of the Act[6] and its implementing regulation[7] 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has

[3] 5 U.S.C. §§ 8101-8193.

[4] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999).

been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[8]

ANALYSIS

In the present case, the Office accepted that appellant sustained bilateral knee strains, a meniscus tear of the left knee, bilateral foot contusions, and a fracture of the fifth metatarsal of the left foot due to a fall at work on February 13, 2002. The Board notes that Dr. Simpson, a Board-certified orthopedic surgeon who served as the Office medical consultant, properly interpreted the medical evidence of record, including the November 19, 1993 report of Dr. Meltzer, a Board-certified orthopedic surgeon who served as an Office referral physician. He to determined that appellant had a three percent permanent impairment of her left leg.

Dr. Simpson properly noted that appellant was entitled to a two percent impairment rating for her left leg based on a partial medial meniscectomy of her left knee.[9] He also correctly determined that she was entitled to one percent impairment for the sensory loss in her left foot. Dr. Simpson indicated that the pain in appellant's fifth metatarsal on the left was of a mild nature and would constitute a Grade 4 under Table 16-10 on page 482 of the A.M.A., *Guides*. He stated that multiplying the maximum value for pain associated with injury to the lateral plantar nerve (5 percent) times the figure for his estimation of the Grade 4 pain (25 percent) would render a pain rating of 1 percent.[10] Dr. Simpson properly excluded impairment ratings for other possible sources of impairment. He determined that appellant did not have any impairment due to limited range of motion of the lower extremities.[11] Dr. Simpson also noted that appellant did not demonstrate any motor loss or atrophy.[12] He properly combined the two percent impairment

[8] *Id*.

[9] *See* A.M.A., *Guides* 546, Table 17-33 (5th ed. 2001).

[10] *Id.* at 482, Table 16-10; 552, Table 17-37. Dr. Simpson made note of the mild chondromalacia of appellant's left knee and properly excluded an impairment rating for this particular condition. There is no evidence that the chondromalacia preexisted appellant's February 13, 2002 employment injury such that it would be included in the impairment rating on this basis. *See Dale B. Larson*, 41 ECAB 481, 490 (1990); *Pedro M. DeLeon, Jr.*, 35 ECAB 487, 492 (1983) (finding that in determining the amount of a schedule award for a member of the body which sustained an employment-related permanent impairment, preexisting impairments of the body are to be included). In his November 19, 1993 report, Dr. Meltzer stated that appellant's chondromalacia was in an early stage and was most likely due to her weight.

[11] For example, Dr. Simpson properly noted that appellant's flexion in both knees (variously reported by Dr. Meltzer as 140 or 150 degrees) and her extension in both knees of 0 degrees would not warrant an impairment rating. *See* A.M.A., *Guides* 537, Table 17-10. He also correctly indicated that appellant's left toe motion would not entitle her to a rating. *See id*. at Table 17-14.

[12] *See* A.M.A., *Guides* 530-32.

rating for the partial medial meniscectomy with the one percent rating for pain associated with injury to the lateral plantar nerve to yield a total left leg impairment of three percent.[13]

As the report of the Dr. Simpson provided the only evaluation which conform with the A.M.A., *Guides*, and it constitutes the weight of the medical evidence.[14]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a three percent permanent impairment of her left leg for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[13] *Id.* at 604-05, Combined Values Chart. The record also contains a May 7, 2003 report of Dr. Kiplinger, an attending Board-certified orthopedic surgeon. He did not provide an impairment rating and the findings of his report would not show that appellant had more than a three percent impairment of her left leg. For example, Dr. Kiplinger indicated that appellant had 125 degrees of flexion in both knees. This finding would not warrant a rating for loss of range of motion. *See* A.M.A., *Guides* 537, Table 17-10.

[14] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).