United States Department of Labor
Employees' Compensation Appeals Board

SIRJIT K. SIDHU, Appellant	)	
and	)	**Docket No. 04-1105**
	)	**Issued: September 30, 2004**
U.S. POSTAL SERVICE, POST OFFICE, RICHMOND, CA, Employer	)	

Appearances:
Sirjit Sidhu, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 22, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs hearing representative's schedule award decision dated January 20, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained more than a four percent permanent impairment of her left lower extremity, for which she received a schedule award.

FACTUAL HISTORY

On June 17, 1999 appellant, then a 37-year-old letter carrier, filed a traumatic injury claim alleging that on June 11, 1999 while performing her duties, her right foot slipped as she descended a steep driveway causing her left leg to buckle. She indicated that her left knee hit the

ground. Appellant did not stop work.[1] On February 4, 2000 the Office accepted her claim for left knee strain and arthroscopic surgery.[2] Appellant received compensation benefits.[3]

On December 4, 2002 appellant submitted a Form CA-7 for compensation for a schedule award.

In a June 20, 2002 report, Dr. Vatche Cabayan a Board-certified orthopedic surgeon and appellant's treating physician, diagnosed internal derangement of the left knee with post meniscectomy, with ongoing symptomatology and subsequent internal derangement of the knee on the right, with evidence of medial meniscus tear and nonspecific aches and pains along the left buttock, left iliac crest, cramping in her calf and numbness in her toes. He advised that this was suggestive of radiculopathy without clear findings and that both the right and left knee injuries were work related. The physician advised that appellant had reached maximum medical improvement. Dr. Cabayan completed an examination of appellant's back and lower extremities noting that there was no evidence of scoliosis or pelvic obliquity, normal lordosis and extremity alignment. He indicated that she could walk without a limp and on her heels and toes, additionally, he indicated that appellant could hop on the right much better than on the left and could squat only one-third of the way. Regarding motion for the lower extremities, he advised that the hips showed 110 degrees of flexion, abduction was 50 degrees, internal rotation was 30 degrees, external rotation was 60 degrees. At the knees, Dr. Cabayan indicated that appellant had 180 degrees of extension and 140 degrees of flexion, 10 degrees of ankle dorsiflexion, 30 degrees of plantar flexion and the subtalar, midfoot and big toe motion were normal with vascularity being intact. He indicated that at the lower extremities, with the supine straight leg raise, there was some tightness of the hamstring on the left and interestingly enough, there was, with her doing the milgram test, some mild popliteal discomfort on the left, but nothing to suggest sciatic pain otherwise. Dr. Cabayan noted tenderness along the inner joint line bilaterally and the outer joint line on the left without any instability to varus and valgus testing and that the Lachman test was unremarkable and the McMurray test was nonspecific and opined that appellant had reached maximum medical improvement for rating purposes. He referenced the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[4] The physician indicated that using Table 64, he opined that appellant would have the equivalent of a two percent impairment for the lower extremity based on the meniscectomy performed.[5] However, Dr. Cabayan noted that she had atrophy of the thigh and referenced Table 37, noting that a one centimeter atrophy, would contribute four percent impairment to the lower extremity and that using a combined value scale, this would equate to a six percent impairment

[1] Following her arthroscopic surgery on September 15, 2000 appellant stopped work until she was released to light duty on December 19, 2000. On December 22, 2000 she accepted a limited-duty job offer.

[2] By letter dated October 19, 2001, the Office accepted that appellant sustained a right knee internal derangement as a result of her June 11, 1999 employment injury.

[3] By decision dated March 15, 2001, the Office determined that appellant's position as a full-time modified city carrier with wages of $720.75 per week, fairly and reasonably represented her wage-earning capacity. The Office notified appellant that they were terminating her compensation as her actual wages met or exceeded the wages of the job she held when injured and no loss of wages had occurred.

[4] A.M.A., *Guides* (4th ed. 1993).

[5] *Id.* at 85, Table 64 (4th ed.)

to the left lower extremity.[6] He further advised that appellant had the equivalent of meniscectomy because of her partial meniscus injury to the right lower extremity and that this equated to an impairment of two percent for the right lower extremity based on Table 64.[7]

By letter dated January 2, 2003, the Office referred appellant for examination with Dr. Jerrold Sherman, a Board-certified orthopedic surgeon.

In a January 22, 2003 report, Dr. Sherman noted appellant's history of injury and treatment and found that she was post arthroscopic surgery for the left knee meniscus injury. He indicated that her left knee was stable, advised that no further medical treatment was needed. The physician indicated that appellant reached maximum medical improvement in February 2001. Dr. Sherman completed the lower extremity evaluation worksheet and indicated that she had normal flexion and extension on the right and left. He also indicated that appellant did not have any atrophy or weakness of the lower extremities and advised that the partial meniscectomy was stable with a 25 percent loss of shock absorption.

In a report dated July 26, 2003, an Office medical adviser utilized the A.M.A., *Guides* (5th ed. 2001) and found that appellant had a left lower extremity impairment of four percent. He referred to Table 16-10 of the A.M.A., *Guides* and noted that appellant's subjective complaints would be graded a maximal Grade III or 60 percent of a maximal femoral nerve of 7 percent, which equated to 4.2 percent rounded off to 4 percent for pain.[8] The Office medical adviser noted that appellant had full range of motion and an absence of atrophy or weakness and concluded that appellant was entitled to a four percent impairment for the left lower extremity. He also considered a second method of deriving an impairment for appellant, which was comprised of a two percent impairment for her partial menisectomy pursuant to Table 17-33 of the A.M.A., *Guides*[9] and explained that no other value could be combined with this. The Office medical adviser indicated that the earlier calculation provided a higher impairment rating and that appellant was entitled to no more than a four percent impairment for the left lower extremity.

Accordingly, on August 18, 2003 the Office granted appellant a schedule award of four percent permanent impairment of the left lower extremity. The award covered a period of 11.52 weeks from February 28, 2001 to May 19, 2001.

By letter dated September 15, 2003, appellant requested a review of the written record. In a January 20, 2004 decision, the Office hearing representative affirmed the August 18, 2003 decision.

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[6] *Id*. at 77, Table 37 (4th ed).

[7] *See supra* note 2.

[8] *Id*. at 482, Table 16-10.

[9] *Id*. at 546, Table 17-33.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[10] and its implementing regulation[11] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage 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.[12] Section 8107 of the Act[13] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[14] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[15] The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[16]

ANALYSIS

In the instant case, Dr. Cabayan used the fourth edition of the A.M.A., *Guides* in making his June 20, 2002 evaluation of appellant's permanent impairment. As of February 1, 2001, however, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.[17] This action was in accordance with the authority granted the Office under 20 C.F.R. § 10.404. The Board has held that a medical opinion not based on the appropriate edition of the A.M.A., *Guides* has diminished probative value in determining the extent of a claimant's permanent

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404.

[12] FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

[13] 5 U.S.C. §§ 8101-8193.

[14] 5 U.S.C. § 8107.

[15] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[16] A.M.A., *Guides* (5th ed. 2001).

[17] FECA Bulletin No. 01-05 (issued January 29, 2001).

impairment.[18] Further, although Dr. Cabayan advised that appellant would be entitled to receive four percent for his one centimeter atrophy, under the fifth edition of the A.M.A., *Guides* at page 382, appellant would not be entitled to receive any rating for his atrophy as his circumference was not greater than two centimeter. Further, he combined the two values and opined that appellant would be entitled to a six percent impairment of the left lower extremity. However, section 17.2d of the fifth edition of the A.M.A., *Guides* specifically states that values for atrophy and muscle weakness are not to be combined.[19]

The Office subsequently based its four percent award determination upon the opinions of Dr. Jerrold Sherman, a Board-certified orthopedic surgeon and the Office medical adviser. He provided an opinion and completed the work sheets provided by the Office. However, Dr. Sherman did not calculate the percentage of impairment that appellant would be entitled to for her accepted injury. Thus, the Office properly referred the matter to an Office medical adviser.[20] In his July 26, 2003 report, the Office medical adviser indicated that he reviewed the record and the report of Dr. Jerrold and applied the fifth edition of the A.M.A., *Guides.* In accordance with the A.M.A., *Guides,* he advised that he had referenced pages 482 and 546 of the A.M.A., *Guides.* The Office medical adviser referred to Table 16-10 and explained that appellant's complaints of pain in the lower extremity entitled her to a 60 percent grade of maximal for her sensory deficit, which equated to 4.2 percent impairment rounded to 4 percent. He also noted an absence of atrophy or weakness and concluded that appellant was not entitled to an additional impairment. The Office medical adviser also noted a second method of determining appellant's impairment which included calculating her award based on the surgery comprised of a partial meniscectomy. He referred to Table 17-33 of the A.M.A., *Guides* and opined that appellant would be entitled to a two percent impairment which could not be combined with any other value.[21] The Office medical adviser explained that appellant was entitled to the higher of the two calculations and concluded that for the left lower extremity, she was entitled to a four percent impairment. The Board finds that the reports of Dr. Sherman and the Office medical adviser are based upon correct application of the A.M.A., *Guides*. Accordingly, there is no medical evidence conforming with the A.M.A., *Guides* to establish that appellant is entitled to more than a four percent permanent impairment of the left lower extremity for which she has already received a schedule award. Therefore, appellant has failed to establish her entitlement to an increased schedule award.

[18] *Carolyn E. Sellers*, 50 ECAB 393, 394 (1999).

[19] A.M.A., *Guides*, section 17.2d. Atrophy ratings should not be combined with any of the other three possible ratings of diminished muscle function (gait derangement, muscle weakness and peripheral nerve injury).

[20] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims,* Chapter 2.808.6(d) (August 2002); *Paul R. Evans, Jr.,* 44 ECAB 646 (1993); *see James E. Jenkins,* 39 ECAB 860 (1988).

[21] A.M.A., *Guides* 546, Table 17-33. (5th ed.); *see also* footnote 19.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained more than a four percent permanent impairment of her left lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 20, 2004 is affirmed.

Issued: September 30, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member