United States Department of Labor
Employees' Compensation Appeals Board

BONNIE A. KLOCKENBRINK, Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Springfield, MO, Employer**	))))))))	**Docket No. 05-229** **Issued: March 17, 2005**

Appearances:
Bonnie A. Klockenbrink, 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 1, 2004 appellant filed a timely appeal of the July 30, 2004 merit decision of the Office of Workers' Compensation Programs, which granted her a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant has more than a one percent impairment of the right lower extremity, for which she received a schedule award.

FACTUAL HISTORY

On February 4, 2003 appellant, then a 47-year-old letter carrier, sustained a dog bite to her right lower extremity while in the performance of duty. The Office accepted her claim for a dog bite of the right thigh, contusion of the right thigh and contusion of the right lower limb. The claim was later expanded to include a right knee strain. On January 2, 2004 appellant filed a claim for a schedule award.

Dr. James T. Shaeffer, a Board-certified orthopedic surgeon, treated appellant from April 4 to August 27, 2003. He diagnosed a right knee sprain and a traumatic synovitis of the right knee. He discharged appellant from treatment on August 27, 2003 and found that she had a five percent impairment due to loss of function of the knee. Dr. Shaeffer reiterated his five percent impairment rating in a January 12, 2004 report.

On March 22, 2004 an Office medical adviser reviewed the record, including Dr. Shaeffer's reports, and concluded that the doctor's rating was not probative because he did not provide any specific information that could be utilized in formulating an impairment rating. The Office medical adviser noted the absence of findings with respect to range of motion, sensory deficit or weakness. He recommended that appellant be referred to a specialist for further evaluation and an impairment rating.

Dr. Michael Clarke, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on April 15, 2004 and diagnosed early degenerative arthritis of the right knee. Physical examination of the knee revealed no effusion, normal range of motion and normal ligamentous stability. He also noted no anteroposterior or collateral instability. Dr. Clarke reported some tenderness to palpation over the medial joint line, but no meniscal click or locking symptoms. He found that appellant's early degenerative right knee arthritis was in part due to her twisting injury on February 4, 2003. Dr. Clarke calculated a 10 percent impairment of the lower extremity secondary to degenerative changes in the knee. In a supplemental report dated May 4, 2004, he provided specific measurements as to appellant's thigh and calf circumference and her range of motion of both knees.[1] He explained that his 10 percent impairment rating was based primarily on x-ray evidence of joint space narrowing and the slightly decreased range of motion and pain in the right knee. Dr. Clarke noted that the right knee joint space was "approximately" 2 millimeters (mm) and the patellofemoral measurement was "approximately" 3 mm.

In a letter dated May 21, 2004, the Office medical adviser asked Dr. Clarke to submit the x-rays he reviewed so that exact measurements could be obtained for purposes of evaluating appellant's permanent impairment. Dr. Clarke submitted the requested films on June 14, 2004 and in an accompanying letter he explained that he was not certain that joint space measurements would be needed at the time the x-rays were taken and, therefore, he was not sure if the anterior-posterior view of the knee was taken with the knee in full extension. Dr. Clarke stated that if the knee was flexed it could appear as if the joint space was smaller. He also explained that the patellofemoral measurements might not be accurate because a better measurement would be obtained from a "skyline view."

In a report dated July 18, 2004, the Office medical adviser stated that given Dr. Clarke's disclaimer regarding the recent x-rays, he could not provide a rating for impairment due to arthritis. He also noted that there was no evidence to support a rating for loss of range of motion or muscle atrophy. The Office medical adviser did, however, calculate a one percent impairment for right knee pain.

[1] Dr. Clarke noted that the right knee fully extended and flexed to 116 degrees while the left knee fully extended and flexed to 119 degrees.

On July 30, 2004 the Office issued a schedule award for one percent impairment of the right lower extremity. The award covered 2.88 weeks from April 15 to May 5, 2004.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act 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.[2] 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.[3] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[4]

ANALYSIS

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[5]

The Office referred appellant to Dr. Clarke, who found that appellant had 10 percent impairment primarily due to arthritis of the right knee. He based his impairment rating on recent x-rays, which he later explained were not entirely suitable for obtaining accurate measurements of joint space intervals. Dr. Clarke stated that he was not sure whether appellant's knee was fully extended and if the knee was flexed it could give the appearance of a smaller joint space. He also noted that the lateral view of the patellofemoral joint was not the best view for obtaining accurate measurements. Because of Dr. Clarke's qualifications regarding the x-rays, the Office medical adviser stated that he could not offer an impairment rating for arthritis under Table 17-31, A.M.A., *Guides* 544-45.[6] Consequently, the Office did not rely on Dr. Clarke's 10 percent impairment rating. The Office medical adviser found that the evidence supported only a one percent impairment for right knee pain.

---

[2] The Act provides that for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks of compensation. 5 U.S.C. § 8107(c)(2).

[3] 20 C.F.R. § 10.404 (1999).

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

[5] *Horace L. Fuller,* 53 ECAB 775, 777 (2002); *James P. Bailey,* 53 ECAB 484, 496 (2002); *William J. Cantrell*, 34 ECAB 1223 (1983).

[6] Chapter 17.2h, Arthritis provides that the knee joint must be in the neutral flexion-extension position (zero degrees) to evaluate the x-rays. Additionally, the estimate for patellofemoral joint is based on a sunrise view or a true lateral view. A.M.A., *Guides* 544.

The report from Dr. Clarke is deficient as the physician did not indicate that the x-rays obtained of appellant's right knee were based on a sunrise view. Given the deficiencies in Dr. Clarke's evaluation, the Office should have requested the physician to obtain an x-ray evaluation conforming to the protocols of the A.M.A., *Guides.* Accordingly, the Office did not properly discharge its responsibilities in developing the record.[7] On remand, the Office should develop the medical evidence as appropriate to obtain a rationalized medical opinion regarding the extent of any permanent impairment causally related to the February 4, 2003 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall by issued.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: March 17, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

---

[7] *Horace L. Fuller, supra* note 5.