

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

L.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 06-657
Issued: August 24, 2006**

Appearances:

*Terrance L. Farris, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 27, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 16, 2005 schedule award decision. 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 has more than a seven percent impairment of her left lower extremity, for which she received a schedule award.

FACTUAL HISTORY

On December 17, 2000 appellant, then a 21-year-old mail processor, filed a traumatic injury claim alleging that her left knee was struck by a truck while in the performance of duty. She stopped work on December 17, 2000 and returned to work on December 21, 2000.¹ On

¹ The record reflects that appellant was a casual employee whose appointment ended December 29, 2000. She was released to full duty on August 23, 2002.

January 25, 2001 the Office accepted appellant's claim for dislocation of the lateral patella on the left.² The Office continued to develop appellant's claim and she received appropriate compensation benefits.³ The Office accepted appellant's claim for a recurrence of left knee patella dislocation on April 2, 2003. On May 5, 2003 appellant underwent left knee patellar realignment surgery, which was authorized by the Office and performed by Dr. George Paletta, Jr., a Board-certified orthopedic surgeon. The Office also authorized physical therapy. The Office authorized a left knee hardware removal on April 5, 2004.

On November 19, 2004 appellant filed a claim for a schedule award.

In an April 26, 2005 report, Dr. Paletta conducted a physical examination and noted that appellant's left knee revealed a well-healed surgical incision, minimal tenderness of the tibial tuberosity, mild tenderness along the lateral joint line, and no effusion. He reviewed a bone scan which revealed an increased uptake at the tibial tuberosity. Dr. Paletta diagnosed patellofemoral pain, which was post proximal distal realignment and opined that appellant had reached maximum medical improvement.

On August 5, 2005 the Office medical adviser noted that appellant was eligible for an impairment rating.

By letter dated August 11, 2005, the Office referred appellant, together with a statement of accepted facts and copies of medical records, to Dr. John A. Gragnani, Board-certified in physical medicine and rehabilitation, for a second opinion examination to determine the extent of any permanent impairment.

In a report dated September 6, 2005, Dr. Gragnani addressed the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*). He noted appellant's history of injury and treatment which included arthroscopic surgery and patellar realignment with arthroscopic debridement, pinning and hardware installation for stability of the transplanted tibial tubercle. Despite physical therapy, appellant continued to complain of left knee pain with chief complaints of sharp pain and some burning sensation in the kneecap. Dr. Gragnani indicated that appellant related difficulty with sitting, standing or walking for any long distance, and noted that she was not currently using any support such as a crutch or cane. On examination, he noted that appellant had a well-healed incision over the anterior portion of the left knee. Dr. Gragnani conducted range of motion measurements for the left knee finding 136 degrees of flexion and 0 degrees of extension and 6 degrees of valgus position. He noted that both kneecaps were easily moved but determined that appellant had pain on lateral displacement of the left patella. Dr. Gragnani diagnosed recurrent dislocation of the left patella, with residual pain and surgical reimplantation of the left quadriceps tendon and opined that November 2004 was the date of maximum medical improvement. He explained that because appellant had normal range of motion of the left knee there was no significant muscle weakness to note. Dr. Gragnani referred to Table 17-33⁴ and

² Appellant underwent surgery for left knee recurrent patellar subluxation on May 16, 2002.

³ The Office also accepted her claim for a recurrence of disability beginning January 12, 2003.

⁴ A.M.A., *Guides* 546.

opined that appellant had a seven percent impairment of her left lower extremity. He also noted that this covered any consideration of appellant's ongoing pain complaints.

In a September 14, 2004 report, the Office medical adviser applied the findings of Dr. Gragnani and utilized the A.M.A., *Guides*. He also noted that Dr. Gragnani addressed range of motion and chronic pain and weakness and utilized a diagnosis-based estimate to determine appellant's rating. The Office medical adviser explained that, due to the patellar subluxation or dislocation with residual instability, the rating of seven percent was proper based upon the A.M.A., *Guides*.

On December 16, 2005 the Office granted appellant a schedule award for seven percent permanent partial impairment of the left lower extremity. The award covered a period of 20.16 weeks from November 30, 2004 to April 20, 2005.⁵

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁶ and its implementing regulation⁷ 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁸

ANALYSIS

The Office accepted appellant's claim for dislocation of the left lateral patella with a recurrence of patella dislocation on April 2, 2003, and a left knee patellar realignment. The Office also authorized a left knee hardware removal on April 5, 2004.

In a report dated September 6, 2005, Dr. Gragnani, the second opinion physician, opined that November 2004 was the date of maximum medical improvement. He determined that appellant had normal range of motion of the left knee and that there was no significant muscle weakness to note. Dr. Gragnani noted that appellant's symptoms were consistent with a patellar subluxation or dislocation with residual instability under Table 17-33⁹ of the A.M.A., *Guides*. Applying this table, he opined that she had an impairment of seven percent of the left lower

⁵ The Office reissued its September 20, 2005 decision, as appellant's representative was not afforded a copy of the decision in a timely manner.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (1999).

⁸ *Id.*

⁹ A.M.A., *Guides* 546.

extremity. Dr. Gragnani also advised that appellant's strength and range of motion findings on examination did not warrant any impairment rating.¹⁰

The Office referred Dr. Gragnani's September 6, 2005 report to an Office medical adviser for review. In a September 14, 2005 report, the Office medical adviser concurred with Dr. Gragnani's explanation for utilizing the diagnosis-based method and noted that the rating of seven percent of the lower extremity which was derived from Table 17-33,¹¹ was proper. The Board finds that Dr. Gragnani and the Office medical adviser properly applied the relevant standards of the A.M.A., *Guides* to arrive at this conclusion regarding the permanent impairment of appellant's left lower extremity.

The record also contains an April 26, 2005 report from Dr. Paletta. However, Dr. Paletta did not rate appellant's permanent impairment pursuant to the A.M.A., *Guides* and his findings do not appear to correlate to any provisions in the A.M.A., *Guides* that might warrant greater impairment than that which was accepted by the Office.

As the September 6, 2005 report of Dr. Gragnani and the September 14, 2005 report of the Office medical adviser provided the only evaluations which conformed with the A.M.A., *Guides*, they constitute the weight of the medical evidence and establish that appellant has no more than a seven percent permanent impairment of the left leg.¹²

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a seven percent impairment of her lower extremity, for which she received a schedule award.

¹⁰ The Board notes that, when such a diagnosis-based impairment rating is applied, it is generally not appropriate to calculate additional impairment based on anatomic or functional based methods (such as limitations related to strength or range of motion). *Id.* at 526

¹¹ *Id.*

¹² See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 16, 2005 is affirmed.

Issued: August 24, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board