United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 06-751**
	)	**Issued: August 29, 2006**
DEPARTMENT OF JUSTICE, U.S. ATTORNEY'S OFFICE, Wilmington, DE, Employer	)	

Appearances:
Jeffrey P. Zeelander, 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 February 10, 2006 appellant filed a timely appeal from a February 2, 2006 decision of the Office of Workers' Compensation Programs awarding her a schedule award for a 20 percent impairment of the right lower extremity.[1] Pursuant to 20 C.F.R. § 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained greater than a 20 percent impairment of the right lower extremity for which she received a schedule award.

[1] The record contains a February 10, 2006 letter decision approving an attorney's fee that appellant previously agreed was reasonable. She did not appeal the February 10, 2006 decision to the Board.

FACTUAL HISTORY

The Office accepted that on September 20, 2003 appellant, then a 55-year-old administrative service specialist, sustained a lumbar strain, sprain and a right medial meniscus tear when lifting boxes in the performance of duty. The Office also authorized two right knee arthroscopies.

On December 4, 2003 appellant underwent a partial medial meniscectomy and extensive synovectomy performed by Dr. Michael Axe, an attending Board-certified orthopedic surgeon, who also repaired a tear of the anterior cruciate ligament. Dr. Robert A. Steele, an attending Board-certified orthopedic surgeon, submitted periodic progress notes through August 2004 opining that marked synovitis from the December 4, 2003 surgery delayed appellant's recovery. On September 16, 2004 he performed a repeat right knee arthroscopy to correct arthrofibrosis and an acute meniscal tear causing a "locked knee." Dr. Steele observed extensive chondromalacia.[2] Following a brief return to light duty in December 2004, appellant resigned from the employing establishment in January 2005.

On May 25, 2005 appellant claimed a schedule award. The Office authorized Dr. George L. Rodriguez, an attending Board-certified physiatrist, to perform a schedule award evaluation.

In an undated report received by the Office on August 23, 2005, Dr. Rodriguez noted findings on his June 21 and August 17, 2005 evaluations. He provided a history of injury and treatment and reviewed medical records. On examination of the right knee Dr. Rodriguez found a 10 degree limitation of extension, moderate subpatellar tenderness on palpation, a positive McMurray's test for lateral meniscal injury and a positive anterior Drawer's sign. He noted that appellant ambulated with a right-sided antalgic gait. Dr. Rodriguez obtained x-rays on July 14, 2005 showing moderate degenerative changes of the tibiofemoral joints bilaterally. He diagnosed osteoarthritis and degenerative joint disease of the right knee, status-post partial medial meniscectomy and a torn right anterior cruciate ligament in the right knee. Dr. Rodriguez opined that appellant had reached maximum medical improvement but still had significant right knee pain. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), he opined that according to Table 17-10, page 537,[3] appellant had a 20 percent impairment of the right lower extremity due to a 10 degree flexion contracture. Dr. Rodriguez also opined that according to Table 17-31, page 544,[4] he had an additional 20 percent impairment of the right lower extremity due to moderate degenerative arthritic changes, with a cartilage interval of 2 millimeters. He combined

[2] Dr. Steele opined that appellant reached maximum medical improvement as of July 2, 2005.

[3] Table 17-10, page 537 of the A.M.A., *Guides*, (5th ed., 2001) is entitled "Knee Impairment." According to Table 17-10, a flexion contracture of between 10 and 19 degrees is equal to a 20 percent impairment of the lower extremity.

[4] Table 17-31, page 544 of the A.M.A., *Guides*, (5th ed., 2001) is entitled "Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals." According to Table 17-31, a 2 millimeter cartilage interval of the knee equals a 20 percent impairment of the lower extremity.

the two 20 percent impairments to equal a total 36 percent impairment of the right lower extremity.

The Office referred Dr. Rodriguez's impairment rating to an Office medical adviser for calculation of the appropriate percentage of impairment according to the fifth edition of the A.M.A., *Guides*. In a September 15, 2005 report, the Office medical adviser opined that appellant had reached maximum medical improvement as of June 21, 2005. He stated that Dr. Rodriguez erred in calculating the schedule award as it was "not permitted to combine range of motion analysis with an arthritis award." The medical adviser noted that there was no roentgenographic evidence supporting Dr. Rodriguez's finding of a two millemeters cartilage interval. The medical adviser calculated a 20 percent impairment of the right lower extremity based on the 10 degree flexion contracture according to Table 17-10, page 536.

By decision dated February 2, 2006, the Office awarded appellant a schedule award for a 20 percent impairment of the right lower extremity. The period of the award ran from June 21, 2005 to July 29, 2006.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[5] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[6]

The schedule award provision of the Act[7] and its implementing regulation[8] 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 regulations as the appropriate standard for evaluating schedule losses.[9]

The A.M.A., *Guides* sets forth which evaluation methods may or may not be used in combination when formulating an impairment rating for the lower extremities.[10] Before finalizing any physical impairment calculation, the Office medical adviser is to verify the

[5] 5 U.S.C. §§ 8101-8193.

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

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

[10] Table 17-2, page 526 of the A.M.A., *Guides* is entitled "Guide to the Appropriate Combination of Evaluation Methods." *See* FECA Bulletin No. 01-05 (issued January 29, 2001). *See also Laura Heyen*, 57 ECAB ___ (Docket No. 05-1766, issued February 15, 2006).

appropriateness of the combination of evaluation methods with that listed in Table 17-2, page 526, the cross-usage chart.[11] Table 17-2 notes that after identifying all the potentially impairing conditions and recording the correct ratings, the medical evaluator should select the most clinically appropriate rating method.

ANALYSIS

The Office medical adviser agreed with Dr. Rodriguez, an attending Board-certified physiatrist, that pursuant to Table 17-10, page 537 of the fifth edition of the A.M.A., *Guides*, appellant was entitled to a 20 percent lower extremity impairment rating due to a 10 degree flexion contracture. Dr. Rodriguez found that appellant had an additional 20 percent impairment to the right lower extremity due to arthritis according to Table 17-31, page 544. The difference between these 2 opinions is that, Dr. Rodriguez combined both 20 percent impairments, arriving at a 36 percent impairment of the right lower extremity. However, as the Office medical adviser noted, Table 17-2, page 526 of the A.M.A., *Guides* explicitly prohibits combining an impairment rating for arthritis or degenerative joint disease with range of motion impairments.[12] Accordingly, the Office medical adviser properly determined that appellant had only a 20 percent impairment of the right lower extremity due to the flexion contracture according to Table 17-10.

It is well settled that, when an attending physician's report gives an estimate of impairment but does not properly apply the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly utilized the A.M.A., *Guides*.[13] In this case, the Office medical adviser provided a reasoned opinion that appellant had a 20 percent impairment of the right knee based on Table 17-10 of the A.M.A., *Guides*. Therefore, the Board finds that the Office medical adviser's opinion carries the weight of the medical evidence in this case.

CONCLUSION

The Board finds that appellant has not established that she sustained greater than a 20 percent impairment of the right lower extremity.

[11] A.M.A., *Guides* 526, Table 17-2.

[12] *Id*.

[13] *Eduardo Gallegos*, 54 ECAB 424 (2003) (where the claimant's physician combined lower extremity impairments prohibited by Table 17-2, the Board affirmed the Office's reliance on an Office medical adviser who correctly applied the appropriate portions of the A.M.A., *Guides*).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Worker's Compensation Programs dated February 2, 2006 is affirmed.

Issued: August 29, 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