

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

C.C., Appellant)

and)

SOCIAL SECURITY ADMINISTRATION,)
PROJECT MANAGEMENT STAFF,)
Woodlawn, MD, Employer)

Docket No. 06-1453
Issued: December 5, 2006

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 5, 2006 appellant filed a timely appeal of the March 13, 2006 merit decision the Office of Workers' Compensation Programs, which granted a schedule award for 10 percent permanent impairment of the left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has more than a 10 percent permanent impairment of the left lower extremity for which she received a schedule award.

FACTUAL HISTORY

On December 28, 2000 appellant, then a 48-year-old automation clerk, filed a traumatic injury claim alleging that she fell on a wet floor at work and injured her left knee. Her claim was accepted for left knee contusion. The Office authorized arthroscopic surgery which was performed on October 10, 2001. Appropriate compensation benefits were paid. Appellant

stopped work on December 20, 2000, worked part time intermittently thereafter and retired on July 1, 2005.

Appellant came under the treatment of Dr. Louis S. Halikman, a Board-certified orthopedic surgeon. In reports dated January 2 to June 19, 2001, he noted appellant's history of injury and treatment for left knee medial compartment arthritis and patellofemoral arthritis. A magnetic resonance imaging (MRI) scan of the left knee revealed a subchondral fracture on the lateral tibial plateau of the left knee. On October 10, 2001 Dr. Halikman performed a chondroplasty, medial femoral condyle and trochleas and medial plica resection and diagnosed impact injury of the left knee. An MRI scan of the left knee dated March 4, 2002, revealed a focal cartilaginous defect involving the medial margin of the lateral femoral condyle and abnormalities within the medial patellar facet and medial femoral condyle. In reports dated August 8, 2002 to February 3, 2003, Dr. Halikman noted that appellant returned to work for four hours per day and reported pain in her right knee. In a November 12, 2003 report, he opined that the December 20, 2000 work injury and appellant's preexisting obesity hindered her recovery and her ability to return to full-time work.

On July 28, 2005 appellant filed a claim for a schedule award. In a letter dated August 25, 2005, the Office requested that she submit a report from a treating physician evaluating the extent of permanent partial impairment of her left leg in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*¹ (A.M.A., *Guides*).

In a report dated August 31, 2005, Dr. Halikman advised that appellant had reached maximum medical improvement. Upon physical examination, appellant had flexion of 100 degrees in both knees, significant pain, weakness, atrophy, loss of endurance and loss of function. Dr. Halikman opined that appellant had a 30 percent permanent impairment of each knee under the A.M.A., *Guides*.²

In a memorandum dated December 12, 2005, the Office referred Dr. Halikman's report to an Office medical adviser for evaluation as to the extent of permanent impairment in accordance with the A.M.A., *Guides*. The Office medical adviser determined that appellant had reached maximum medical improvement on August 31, 2005 and had a 10 percent permanent impairment of the left leg. Dr. Halikman reported flexion for the left knee of 100 degrees which represented a 10 percent impairment of the left lower extremity in accordance with the fifth edition of the A.M.A., *Guides*.³ The medical adviser noted that he investigated the possibility of adding an arthritis impairment to appellant's award based upon Table 17-31, page 544 of the A.M.A., *Guides*. However, impairment due to arthritis could not be combined with loss of motion under the cross-usage chart at Table 17-2, page 526 of the A.M.A., *Guides*.

¹ A.M.A., *Guides* (5th ed. 2001).

² A.M.A., *Guides* (4th ed. 1993).

³ A.M.A., *Guides* 537, Table 17-10 (5th ed. 2001).

In a decision dated March 13, 2006, the Office granted appellant a schedule award for 10 percent permanent impairment of the left lower extremity. The period of the award was from August 31, 2005 to March 20, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ 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.

As relevant to this appeal, FECA Bulletin No. 01-05 provides that, in making an impairment rating for the lower extremities, different evaluation methods cannot be used in combination. For example, arthritis impairments obtained from Table 17-31 cannot be combined with impairment determinations based on gait derangement (Table 17-5); muscle atrophy (Table 17-6); muscle strength (Tables 17-7 and 17-8) or range of motion loss (section 17.2f). Before finalizing any physical impairment calculation, the Office medical adviser is to verify the appropriateness of the combination of evaluation methods with that listed in Table 17-2, the cross-usage chart.⁶

ANALYSIS

On appeal, appellant argues that she is entitled to a 30 percent permanent impairment of the left lower extremity as set forth by her physician, Dr. Halikman, on August 31, 2005. The Office accepted appellant's claim for left knee contusion and arthroscopic surgery was performed on October 10, 2001.

The Board has carefully reviewed Dr. Halikman's report of August 31, 2005 and finds that he did not adequately explain how his determination was reached in accordance with the relevant protocols of the A.M.A., *Guides*.⁷ Dr. Halikman noted that left leg flexion was 100 degrees and there was significant pain. He opined that appellant had a 30 percent permanent impairment of each knee in accordance with the fourth edition of the A.M.A., *Guides*.⁸ The

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ See FECA Bulletin No. 01-05 (issued January 29, 2001); see also A.M.A., *Guides* 526, Table 17-2 (5th ed.).

⁷ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

⁸ A.M.A., *Guides* (4th ed. 1993). Dr. Halikman's report was based on the fourth edition of the A.M.A., *Guides*. The fifth edition was adopted by the Office effective February 1, 2001. See FECA Bulletin No. 01-05 (issued January 29, 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

Board notes that Dr. Halikman incorrectly noted that flexion was measured at 100 degrees for a 30 percent impairment, as this figure does not conform with either the fourth or fifth edition of the A.M.A., *Guides* which provides for a 10 percent impairment rating for 100 degrees of flexion.⁹ Dr. Halikman noted that appellant sustained a 30 percent permanent impairment of the left lower extremity but failed to provide his calculations in support of this determination. He did not cite to any tables or charts for his impairment rating determination. The Board finds that Dr. Halikman did not properly follow the A.M.A., *Guides* and his report is of diminished probative value.¹⁰

The medical adviser properly reviewed Dr. Halikman's August 31, 2005 report and applied the A.M.A., *Guides* (5th ed.) to determine the impairment rating. The medical adviser determined that appellant sustained a 10 percent permanent impairment of the left lower extremity due to loss of flexion.¹¹ Under Table 17-10 of the A.M.A., *Guides*, flexion of less than 110 degrees is equal to a 10 percent lower extremity impairment. As appellant had 100 degrees of flexion, the medical adviser properly found 10 percent impairment for loss of range of motion. Furthermore, the medical adviser noted that no consideration was given for arthritis in addition to range of motion because this would be contrary to the cross usage chart at Table 17-2, page 526. The medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Halikman's report to reach an impairment rating of 10 percent for the left lower extremity. This evaluation conforms to the A.M.A., *Guides*. There is no medical evidence of record to establish that appellant has more than a 10 percent impairment of the left leg.

CONCLUSION

The Board finds that appellant has no more than a 10 percent impairment of the left leg for which she received a schedule award.¹²

⁹ See A.M.A., *Guides* 78, Table 41 (4th ed. 1993); see also A.M.A., *Guides* 537, Table 17-10 (5th ed. 2001).

¹⁰ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

¹¹ See Table 17-10, page 537 (5th ed. 2001) (A.M.A., *Guides*).

¹² With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c). The Board notes that this decision does not preclude appellant from filing a reconsideration request with the Office and submitting additional evidence in support of her request.

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board