United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
and	)	**Docket No. 06-1026**
	)	**Issued: October 16, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Forth Worth, TX, Employer	)	

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 March 27, 2006 appellant filed a timely appeal from the February 15, 2006 merit decision of the Office of Workers' Compensation Programs concerning her entitlement to schedule award compensation.[1] 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 met her burden of proof to establish that she has more than a 10 percent permanent impairment of her right leg and a 2 percent permanent impairment of her left leg, for which she received schedule awards.

[1] The record also contains a March 24, 2006 Office decision regarding appellant's wage-earning capacity, but appellant did not appeal this decision to the Board and the matter is not currently before the Board.

FACTUAL HISTORY

On August 21, 2003 appellant, then a 55-year-old customer service supervisor, filed an occupational disease claim alleging that she sustained injury to her lower extremities due to constantly standing and walking across concrete floors at work. Appellant stopped work on June 16, 2003. The Office accepted that appellant sustained aggravation of enthesopathy of both knees, lumbar strain, left medial meniscus tear, and right lateral and medial meniscus tears. The Office paid appropriate compensation for periods of disability.[2]

On March 31, 2004 appellant underwent a left partial medial meniscectomy with removal of multiple loose bodies and a left notch abrasion. On September 7, 2004 appellant underwent a right partial lateral and medial meniscectomy with notch and patellar abrasion multi-compartment synovectomy, and right lateral retinacular release. Both procedures were performed by Dr. Linden Dillin, an attending Board-certified orthopedic surgeon, and were authorized by the Office.

In a report dated June 28, 2005, Dr. Robert M. Chouteau, an osteopath and Board-certified orthopedic surgeon who served as an Office referral physician, indicated that appellant continued to have residuals of her employment injury but was capable of working four hours per day with restrictions. In a report dated August 19, 2005, Dr. John A. Sklar, a Board-certified physical medicine and rehabilitation physician who also served as an Office referral physician, indicated that appellant could work eight hours per day with restrictions. Dr. Dillon continued to submit reports produced around this time which indicated that appellant was totally disabled from all work.[3]

The Office referred appellant to Dr. Anil T. Bangale, a Board-certified orthopedic surgeon, to evaluate whether she had permanent impairment of her lower extremities.[4]

In a report dated October 7, 2005, Dr. Bangale stated that appellant had reached maximum medical improvement with respect to her employment-related condition. He noted that she complained of moderate pain in her knees but that she exhibited no sensory loss of her lower extremities upon examination. Dr. Bangale indicated that appellant had 5/5 motor strength of her lower extremities upon examination and she had normal range of motion of hips, knees, and ankles, including bilateral knee flexion of 110 degrees. He concluded that appellant had a 10 percent permanent impairment of her right leg due to her partial lateral and medial meniscectomy

[2] The findings of September 11, 2003 magnetic resonance imaging (MRI) testing showed advanced osteoarthritis, severe chondromalacia and moderate effusion in both knees, medial meniscus tear in the right knee, and lateral and medial meniscus tears in the left knee. It appears that the MRI scan findings may have inadvertently been reversed with respect to the types of meniscus tears in appellant's knees in that the reports of her later surgery clearly indicate that she a medial meniscus tear in her left knee and lateral and medial meniscus tears in her right knee.

[3] Dr. Dillon indicated that appellant could flex her knees to 100 degrees and could fully extend them.

[4] A document in the record suggests that appellant was referred to Dr. Bangale for an impartial medical examination regarding her ability to work, but it appears that she was referred to him for a second opinion regarding the permanent impairment of her lower extremities. *See* 5 U.S.C. § 8123(a) regarding referrals for impartial medical examinations.

and a 2 percent permanent impairment of her left leg due to her partial medial meniscectomy. Dr. Bangale stated that these ratings were based on Table 17-33 on page 546 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In November 2005 appellant returned to work for four hours per day as a modified customer service supervisor. In January 2006 she filed a claim for schedule award compensation.

On February 8, 2006 Dr. Ronald Blum, a Board-certified orthopedic surgeon serving as an Office district medical adviser, reviewed the evidence of record, including the October 7, 2005 report of Dr. Bangale. He concluded that, under Table 17-33 on page 546 of the A.M.A., *Guides* (5th ed. 2001), appellant had a 10 percent permanent impairment of her right leg due to her partial lateral and medial meniscectomy. Dr. Blum further determined that, under the same table, appellant had a two percent permanent impairment of her left leg due to her partial medial meniscectomy.[5]

By award of compensation dated February 15, 2006, the Office granted appellant schedule awards for a 10 percent permanent impairment of her right leg and a 2 percent permanent impairment of her left leg.[6] The awards ran for 34.56 weeks from February 3 to October 2, 2006.

LEGAL PRECEDENT

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 regulation as the appropriate standard for evaluating schedule losses.[9]

[5] Dr. Blum actually stated in his report that appellant had a 10 percent permanent impairment of her left leg and a 2 percent permanent impairment of her right leg, but it is clear that this was an inadvertent error as the content and context of his report shows that he meant to state that appellant had a 10 percent permanent impairment of her right leg and a 2 percent permanent impairment of her left leg.

[6] The Office inadvertently indicated that appellant had a 10 percent permanent impairment of her left leg and a 2 percent permanent impairment of her right leg as it appears to have repeated Dr. Blum's typographical error.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404 (1999).

[9] *Id*.

ANALYSIS

The Office accepted that appellant sustained aggravation of enthesopathy of both knees, lumbar strain, left medial meniscus tear, and right lateral and medial meniscus tears. By award of compensation dated February 15, 2006, the Office granted appellant schedule awards for a 10 percent permanent impairment of her right leg and a 2 percent permanent impairment of her left leg.

In determining that appellant had a 10 percent impairment of her right leg and a 2 percent impairment of her right leg, the Office properly relied on the October 7, 2005 report of Dr. Bangale, a Board-certified orthopedic surgeon and referral physician, and the February 8, 2006 report of Dr. Ronald Blum, a Board-certified orthopedic surgeon who served as an Office district medical adviser. Both physicians correctly concluded that, under Table 17-33 of the A.M.A., *Guides* (5th ed. 2001), appellant had a 10 percent permanent impairment of her right leg due to her partial lateral and medial meniscectomy. Under the same table, she had a two percent permanent impairment of her left leg due to her partial medial meniscectomy.[10] They properly determined that it was not appropriate to assign impairment ratings for sensory, strength or range of motion deficits.[11] The record does not contain any other report which conforms with the A.M.A., *Guides* and therefore the reports of Dr. Bangale and Dr. Blum constitute the weight of the medical evidence.[12]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a 10 percent permanent impairment of her right leg and a 2 percent permanent impairment of her left leg, for which she received a schedule award.

[10] A.M.A., *Guides* 546, Table 17-33.

[11] *See generally* A.M.A., *Guides* 531-43, 550-51. Dr. Bangale indicated that appellant had normal sensory, strength and range of motion examinations. Appellant's bilateral knee flexion of 110 degrees would not entitle her to an impairment rating. *See* A.M.A., *Guides* 537, Table 17-10. The Board notes that rating based on strength and range of motion deficits would not generally be combined with diagnosis-based ratings (such as those derived from appellant's knee surgeries). *See* A.M.A., *Guides* 526, Table 17-2.

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

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 15, 2006 decision is affirmed.

Issued: October 16, 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