

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

C.D., Appellant)	
)	
and)	Docket No. 07-973
)	Issued: August 17, 2007
DEPARTMENT OF THE INTERIOR, BUREAU)	
OF RECLAMATION, Boulder City, NV,)	
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
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 26, 2007 appellant filed a timely appeal from a November 28, 2006 merit decision of the Office of Workers' Compensation Programs denying her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant is entitled to a schedule award for a permanent impairment of the left lower extremity.

FACTUAL HISTORY

On August 2, 2005 appellant, then a 39-year-old public affairs specialist, filed a claim for a traumatic injury sustained on July 27, 2005 when she struck her left knee attempting to reach

the window seat of an airplane.¹ The Office accepted that she sustained a left knee sprain/strain of the cruciate ligament. On November 10, 2005 Dr. Robert Jeff Grondel, a Board-certified orthopedic surgeon, reconstructed the anterior cruciate ligament of the left knee to repair a tear.

In a report dated April 19, 2006, Dr. Grondel noted that appellant was “doing well and having no problems at this time.” On examination of the left knee, he found no swelling, effusion, masses, defects or crepitation. Dr. Grondel further found that appellant had full range of motion and a negative anterior drawer test, a negative posterior drawer test, a negative Lachman’s test, negative valgus and varus stress tests and no valgus opening at 30 degrees. He diagnosed a left anterior cruciate ligament tear and left knee pain. Dr. Grondel found that appellant could resume her regular employment.²

On June 12, 2006 appellant filed a claim for a schedule award. On June 29, 2006 the Office referred appellant to Dr. Maureen E. Mackey, a Board-certified physiatrist, for an evaluation of any permanent impairment to the left lower extremity. In an impairment evaluation dated July 25, 2006, Dr. Mackey found that appellant had no knee pain, ankylosis, atrophy or weakness. She measured range of motion of the left knee as 140 degrees of flexion and 0 degrees extension. Dr. Mackey found mild instability of the anterior and medial cruciate ligaments and “[p]ost-traumatic irregularity with arthritis, which affects cartilage and bone. This is palpable with motion in the knee, in which one feels crepitus.” Dr. Mackey opined that appellant reached maximum medical improvement on April 1, 2006.

An Office medical adviser reviewed the evidence on August 15, 2006. He noted that appellant’s attending physician found normal findings on examination, full range of motion and no instability. Dr. Mackey, however, found ligament instability and post-traumatic arthritis. The Office medical adviser recommended another evaluation “to resolve this discrepancy.”

On September 19, 2006 the Office referred appellant to Dr. Donald R. Mackay, a Board-certified orthopedic surgeon, for an impartial medical examination. Dr. Mackay noted that appellant “has no complaints of pain, swelling or functional problem in her left knee. She does report occasional discomfort over the lateral femoral condyle.” Appellant also intermittently heard a “grinding noise” when moving her knee. Dr. Mackay listed normal findings on sensory examination and bilateral range-of-motion measurements of 0 to 140 degrees for the knees. He stated:

“There was tenderness to pressure over the lateral femoral condyle just below a healed incision. This area of discomfort corresponded to the femoral fixation pin for the reconstructed anterior cruciate ligament. This prominent pin probably accounts for the grinding that she experiences when moving her knee.

¹ At the time of her injury, appellant was in a travel status.

² In a progress report dated June 9, 2006, Dr. Grondel again listed normal findings on examination of the left knee and noted that appellant related that she was doing “wonderfully well.”

“There was no effusion in her left knee. There was no joint line tenderness.

“She had very slight medial laxity in her left knee and it was the same as the mild medial laxity in her right knee.

“She had a negative Lachmann sign and a negative pivot shift test in her left knee.”

He found muscle strength of grade five in her bilateral lower extremities and minor differences in leg circumferences which were “not significant.” Dr. Mackay obtained x-rays of both knees which he found were normal with a four to five millimeter cartilage thickness in the medial and lateral compartments and patellofemoral joint bilaterally. He diagnosed anterior cruciate ligament disruption of the left knee due to the July 27, 2005 employment injury. Dr. Mackay asserted that appellant had no impairment of the left knee based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). He stated, “Her range of motion in normal and is equal to the uninjured right knee. There is no muscle atrophy in her left thigh or her left calf. [Appellant’s] x-rays were normal and there is no objective, measurable loss of cartilage in any are of her left knee when compared to her right knee.” Dr. Mackay cited to Tables 17-6, 17-10 and 17-31 on pages 530, 534 and 544 of the A.M.A., *Guides* in reaching his conclusions.

By decision dated November 28, 2006, the Office denied appellant’s claim for a schedule award on the grounds that the medical evidence did not establish that she had an impairment of a scheduled member or function of the left lower extremity due to her employment injury.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act,³ and its implementing federal regulation,⁴ set 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁶

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ 20 C.F.R. § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

a third physician who shall make an examination.⁷ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁸ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

ANALYSIS

The Office accepted that appellant sustained a sprain/strain of the anterior cruciate ligament of the left knee due to a July 27, 2005 employment injury. She underwent a reconstruction of the anterior cruciate ligament on November 10, 2005. On April 19, 2006 Dr. Grondel found that appellant had no swelling, effusion, defects, crepitus or loss of range of motion of the left knee. He further found that she had a negative anterior drawer test, a negative posterior drawer test, negative Lachman's test, negative valgus and varus stress test and no valgus opening at 30 degrees.

Appellant filed a claim for a schedule award on June 12, 2006. The Office referred her to Dr. Mackey for a second opinion examination. On July 25, 2006 Dr. Mackey found that appellant had no knee pain, ankylosis, atrophy or weakness but had mild instability of the anterior and medial cruciate ligaments and post-traumatic arthritis with crepitus. She measured range of motion of the left knee as 140 degrees of flexion and 0 degrees extension. Dr. Mackey opined that appellant reached maximum medical improvement on April 1, 2006.

The Office determined that a conflict existed between appellant's physician, Dr. Grondel, and Dr. Mackey, the Office referral physician, regarding whether she had a permanent impairment of the left lower extremity. The Office referred her to Dr. Mackay for an impartial medical examination. In a report dated October 26, 2006, Dr. Mackay listed normal findings on sensory examination and bilateral range of motion measurements of 0 to 140 degrees for the knees. He interpreted x-rays of both knee as essentially normal with four to five millimeters of cartilage thickness in the medial and lateral compartments and the patellofemoral joint bilaterally. Dr. Mackay found no effusion or joint line tenderness of the left knee and a negative Lachman's sign and pivot shift test. He found slight medial laxity bilaterally with full strength and insignificant differences in leg circumference. Applying the A.M.A., *Guides*, Dr. Mackay

⁷ 5 U.S.C. § 8123(a).

⁸ 20 C.F.R. § 10.321.

⁹ *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

properly determined that appellant had no impairment due to loss of range of motion,¹⁰ atrophy,¹¹ or arthritis.¹²

Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹³ The Board has carefully reviewed the opinion of Dr. Mackay and finds that, as it was based on a proper factual and medical background, comports with the A.M.A., *Guides* and is well rationalized, his opinion as the impartial medical specialist is entitled to special weight. Accordingly, appellant has not met her burden of proof to establish that she sustained a permanent impairment of the left lower extremity.

On appeal appellant contends that she is entitled to a schedule award because she experiences pain and instability in her knee while working, especially conducting outside tours. She also noted that her knee condition worsened with the onset of cold temperatures. The calculation of a schedule award, however, does not take into account factors such as employability or limitations on daily activities.¹⁴

CONCLUSION

The Board finds that appellant failed to establish that she is entitled to a schedule award for the left lower extremity.

¹⁰ A.M.A., *Guides* 573, Table 17-10.

¹¹ *Id.* at 530, Table 17-6.

¹² *Id.* at 544, Table 17-31.

¹³ *Sharyn D. Bannick*, 54 ECAB 537 (2003).

¹⁴ *James A. Castagno*, 53 ECAB 417 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 28, 2006 is affirmed.

Issued: August 17, 2007
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