

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

_____)
F.C., Appellant)

and)

U.S. POSTAL SERVICE, BENTON PARK POST)
OFFICE, St. Louis, MO, Employer)
_____)

Docket No. 07-904
Issued: July 17, 2007

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 January 16, 2007 appellant filed a timely appeal from a March 29, 2006 decision of a hearing representative of the Office of Workers' Compensation Programs finding that she was not entitled to an increased 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 has more than a 10 percent permanent impairment of the right lower extremity and a 3 percent permanent impairment of the left lower extremity.

FACTUAL HISTORY

On June 25, 2001 appellant, then a 50-year-old letter carrier, filed an occupational disease claim alleging that she sustained a knee condition due to factors of her federal employment. The Office accepted the claim for bilateral chondromalacia and a right lateral meniscus tear. On February 16, 2001 appellant underwent arthroscopic surgery on both knees.

On October 11, 2002 appellant filed a claim for a schedule award. The Office referred her to Dr. John A. Gragnani, Board-certified in physical medicine and rehabilitation and occupational medicine, for an evaluation of the extent of any permanent impairment of the lower extremities in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). In an impairment evaluation dated March 26, 2003, Dr. Gragnani found that appellant had a 10 percent impairment of the right knee due to pain and decreased motion and a 3 percent impairment of the left knee due to pain. On April 5, 2003 an Office medical adviser concurred with Dr. Gragnani's findings. By decision dated April 10, 2003, the Office granted appellant schedule awards for a 3 percent permanent impairment of the left lower extremity and a 10 percent permanent impairment of the right lower extremity. The period of the awards ran for 37.44 weeks from February 16 to November 5, 2002.

On November 3, 2003 appellant filed a claim for an increased schedule award.¹ By letter dated May 26, 2004, the Office requested that she submit an impairment evaluation from her attending physician addressing the extent of any permanent impairment in accordance with the A.M.A., *Guides*.²

In a report dated August 26, 2004, Dr. W. Christopher Kostman, a Board-certified orthopedic surgeon and appellant's attending physician, discussed her work injury and February 16, 2001 left knee surgeries. He noted that she previously underwent a partial lateral meniscectomy and lateral release of the right knee and a lateral retinacular release on the left knee. Dr. Kostman opined that appellant had a two percent permanent impairment of the right knee and no impairment of the left knee. He found that she reached maximum medical improvement on October 28, 2003.

By decision dated July 18, 2005, the Office denied appellant's request for an increased schedule award on the grounds that the medical evidence was insufficient to support an additional impairment.

On August 13, 2005 appellant requested an oral hearing. Following a January 10, 2006 telephonic hearing, by decision dated March 29, 2006, an Office hearing representative affirmed the July 18, 2005 decision. He found that there was no medical evidence showing that she had more than a 10 percent impairment of the right lower extremity and a 3 percent impairment of the left lower extremity.

¹ The Office of Personnel Management approved appellant's application for disability retirement on September 29, 2003.

² On February 20, 2004 appellant requested reconsideration of the April 10, 2003 decision. She contended that she should be paid at the dependent rate because her daughter was in college. The Office informed appellant that she was not entitled to augmented compensation because her daughter did not attend college full time during the period of the schedule award.

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) 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

A claim for an increased schedule award may be based on new employment exposure; however, additional occupational exposure is not a prerequisite. Absent additional employment exposure, an increased schedule award may also be based on medical evidence demonstrating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.⁷

ANALYSIS

The Office accepted that appellant sustained bilateral chondromalacia and a right lateral meniscus tear due to factors of her federal employment. She underwent bilateral arthroscopic knee surgery in February 2001. Appellant filed a claim for a schedule award on October 11, 2002. By decision dated April 10, 2003, the Office granted her a schedule award for a 10 percent permanent impairment of the right lower extremity and a 3 percent permanent impairment of the left lower extremity. The Office based the schedule award on the opinion of Dr. Gragnani, the Office referral physician.

On November 3, 2003 appellant filed a claim for an increased schedule award. She submitted a report dated August 26, 2004 from Dr. Kostman, her attending physician, who discussed appellant's history of injury and the results of the February 2001 arthroscopic surgery. Dr. Kostman opined that she had a two percent permanent impairment of the right lower extremity and no impairment of the left lower extremity. He did not make any reference to the A.M.A., *Guides* in reaching his determination. Moreover, Dr. Kostman did not support impairment greater than that previously awarded.

Where a claimant has previously received a schedule award and subsequently claims an additional schedule award due to a worsening of his or her condition, the claimant bears the

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).

⁷ *Linda T. Brown*, 51 ECAB 115 (1999).

burden of proof to establish a greater impairment causally related to the employment injury.⁸ Appellant has not provided any medical evidence supporting that she has more than a 10 percent permanent impairment of the right lower extremity and a 3 percent permanent impairment of the left lower extremity. The Office therefore properly denied her claim for an increased schedule award.

On appeal appellant argues that she is entitled to additional monetary compensation. The issue of the degree of appellant's permanent impairment is medical in nature and can only be resolved by the submission of probative medical evidence.⁹ The record contains no medical evidence supporting that she sustained more than a 10 percent right lower extremity impairment and a 3 percent left lower extremity impairment.

CONCLUSION

The Board finds that appellant has no more than a 10 percent permanent impairment of the right lower extremity and a 3 percent permanent impairment of the left lower extremity for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 29, 2006 is affirmed.

Issued: July 17, 2007
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

⁸ *Edward W. Spohr*, 54 ECAB 806 (2003).

⁹ *Ronald M. Cokes*, 46 ECAB 967 (1995).