

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

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sharon Hill, PA, Employer**

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**Docket No. 08-91
Issued: April 8, 2008**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 10, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated May 14, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to a schedule award for her accepted right knee condition.

FACTUAL HISTORY

This case has been before the Board on two prior occasions. By decision dated September 4, 2001, the Board remanded the case to the Office to obtain a supplemental report from Dr. E. Balasubramanian, a Board-certified orthopedic surgeon, who had provided an impartial evaluation for the Office, regarding the extent of appellant's bilateral knee impairment.¹ In a December 9, 2004 decision, the Board affirmed an Office decision finding that

¹ Docket No. 01-12 (issued September 4, 2001). The accepted conditions are bilateral tears of the medial meniscus. Appellant had surgery on her left knee but not her right.

the weight of the medical evidence rested with Dr. Balasubramanian's opinion. He found that appellant had no more than a two percent permanent impairment of her left lower extremity, for which she had received a schedule award.² The law and the facts of the previous Board decisions are incorporated herein by reference.

By letter dated December 21, 2004, appellant, through her attorney, requested that the Office issue a schedule award for her right lower extremity. On January 12, 2005 the Office informed appellant's attorney that the June 17, 1998 report of Dr. David Weiss, an osteopath, was stale and appellant should provide an up-to-date narrative regarding her right knee. In a January 25, 2006 letter, appellant's attorney advised that no additional medical evidence would be submitted.

The medical evidence includes a report dated December 3, 2002 in which Dr. Balasubramanian noted his review of the record including appellant's history of left knee surgery and her complaint of bilateral knee pain. He provided examination findings of a normal gait, able to toe walk, heel walk, partially squat and get up without difficulty, hop in place and that she could do single foot toe raises. Examination of both knees revealed no effusion or synovitis and no evidence of meniscal signs or ligamentous laxity. There was no loss of knee range of motion and measurements of quadriceps, calves and knees were equal. Dr. Balasubramanian advised that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),³ appellant had no physical indication of impairment but that, as she had a prior partial meniscectomy of the left knee, under Table 17-33, she would be entitled to a two percent left lower extremity impairment. In a report dated January 24, 2003, an Office medical adviser concurred with Dr. Balasubramanian's findings. A right lower extremity magnetic resonance imaging (MRI) scan study on August 8, 2003 demonstrated low-grade osteoarthritis with no evidence of meniscal tear. Dr. David N. Bosacco, Board-certified in orthopedic surgery, provided treatment notes dated June 10 and September 4, 2003, in which he related appellant's complaint of aching discomfort in both knees and the MRI scan findings. By report dated October 1, 2003, Dr. Weiss noted his review of his 1998 examination report, Dr. Balasubramanian's December 3, 2002 report and that of the Office medical adviser. He advised that at the time of his examination in 1998 appellant had significant bilateral strength deficits for a total 27 percent right lower extremity impairment.

By decision dated October 19, 2006, the Office found that appellant was not entitled to a schedule award for her right knee.

On October 25, 2006 appellant, through her attorney, requested a hearing that was held on February 22, 2007.⁴ At the hearing, appellant's attorney argued that Dr. Weiss' opinion should represent the weight of the medical opinion. He submitted treatment notes dated October 5 and November 7, 2006, in which Dr. Bosacco again noted appellant's complaints of pain and advised that a new MRI scan did not show any significant change other than a bone bruise which was probably degenerative in origin.

² Docket No. 04-1640 (issued December 9, 2004).

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁴ Appellant did not appear at the hearing.

By decision dated May 14, 2007, an Office hearing representative affirmed the October 19, 2006 decision.

LEGAL PRECEDENT

Pursuant to section 8107 of the Federal Employees' Compensation Act⁵ and section 10.404 of the implementing federal regulations,⁶ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁷ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁸ Chapter 17 provides the framework for assessing lower extremity impairments.⁹

Section 8123(a) of the Act 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 a third physician who shall make an examination.¹⁰

ANALYSIS

The Board finds that appellant has not established that she is entitled to a schedule award for her right lower extremity. In his comprehensive report dated December 3, 2002, Dr. Balasubramanian noted his review of the record and provided examination findings. He advised that, upon review of the fifth edition of the A.M.A., *Guides*, appellant had no physical findings in either knee that would entitle her to a schedule award but that, based on Table 17-33, she would be entitled to a two percent left lower extremity based on her partial meniscectomy of the left knee.

Appellant submitted an October 1, 2003 report from Dr. Weiss. The Board notes that he had been on one side of the conflict in medical evidence. The October 1, 2003 report merely reiterated his previous findings, without reexamining appellant. An additional report from a claimant's physician, which essentially repeats earlier findings and conclusions, is generally insufficient to overcome the weight accorded to an impartial medical specialist's report.¹¹ Moreover, Dr. Weiss' opinion had previously been reviewed by the Board in its December 9,

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ A.M.A., *Guides*, *supra* note 3.

⁸ See *Joseph Lawrence, Jr.*, *supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁹ A.M.A., *Guides*, *supra* note 3 at 523-64.

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *Roger G. Payne*, 55 ECAB 535 (2004).

2004 decision.¹² The reports of Dr. Bosacco and the August 8, 2003 MRI scan contain no findings pertaining to any impairment rating and are therefore irrelevant to the issue of permanent impairment.

Dr. Balasubramanian provided examination findings and rationale for his medical opinion and found that appellant had no right lower extremity impairment. The Board finds that his report is entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence.¹³ Appellant did not submit sufficient medical evidence to establish entitlement to a schedule award for her right lower extremity.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she is entitled to a schedule award for her right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2007 be affirmed.

Issued: April 8, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹² *Supra* note 2.

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