United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 08-1682**
	)	**Issued: December 12, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Mount Shasta, CA, Employer	)	

Appearances:
Appellant, pro se
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 May 27, 2008 appellant filed a timely appeal from a March 24, 2008 merit decision of the Office of Workers' Compensation Programs granting her 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 has more than a 10 percent permanent impairment of the right lower extremity.

FACTUAL HISTORY

On June 21, 2006 appellant, then a 53-year-old regular rural carrier, filed an occupational disease claim alleging that she aggravated her knee condition stepping out of a vehicle onto her right foot on June 12, 2006. She also attributed her knee condition to repetitive motion. Appellant did not stop work. The Office accepted her claim for a temporary aggravation of localized primary osteoarthritis of the right lower leg and a right knee medial meniscus tear and lateral meniscus bucket handle tear.

On September 8, 2006 Dr. Stephen O. Berthelsen, a Board-certified orthopedic surgeon, performed a medial and lateral meniscectomy and cartilage shaving with microfracture of the medial femoral condyle. He found "extensive tearing of the anterior horn of the lateral meniscus" and performed a debridement of the medical and lateral meniscus. Appellant returned to her usual employment following the surgery on December 13, 2006.

An x-ray of the right knee obtained on June 20, 2006 showed degenerative changes in the mid-tibial plateau and mild patellofemoral osteoarthritis. A magnetic resonance imaging (MRI) scan study dated July 27, 2006 revealed a tear of the anterior horn of the lateral meniscus, Grade 2 meniscal degeneration, a six millimeter osteochondral abnormality and a partial thickness tear of the anterior cruciate ligament.

In a report dated March 5, 2007, Dr. Berthelsen diagnosed chronic residual knee pain due to significant chondromalacia on both the medial and lateral side of the joint. On examination he found no swelling, instability or loss of sensation with intact sensation and full range of motion. Dr. Berthelsen stated, "At surgery we noted significant areas of [G]rade [3] chondromalacia and much broader areas of [G]rade [2] chondromalacia. [Appellant] has a large lateral meniscal tear, which was resected and a posterior horn tear of the medial meniscus, which was resected." Dr. Berthelsen opined that appellant's condition was permanent and stationary.

On July 19, 2007 appellant filed a claim for a schedule award.[1] By letter dated August 2, 2007, the Office referred her to Dr. Ajit S. Garcha, a Board-certified physiatrist, for a second opinion examination to determine the extent of any permanent impairment. On August 30, 2007 Dr. Garcha discussed appellant's complaints of intermittent pain in the right lateral calf with radiation. He found full strength in the lower extremity and intact tone and muscle mass. Dr. Garcha opined that on examination appellant's knee was intact except for right fibular head pain with palpation. He diagnosed right lateral calf pain and status post knee surgery. Dr. Garcha noted that an electromyogram and nerve conduction study were normal.

On December 19, 2007 an Office medical adviser reviewed the medical evidence and noted that Dr. Garcha listed normal findings on examination except for pain to palpation of the right fibular head. He concluded that appellant had a 10 percent permanent impairment of the right lower extremity due to her partial medial and partial lateral meniscectomy pursuant to Table 17-33 on page 546 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001). The Office medical adviser found that she reached maximum medical improvement by August 30, 2007.

By decision dated March 24, 2008, the Office granted appellant a schedule award for a 10 percent permanent impairment of the right lower extremity. The period of the award ran for 28.8 weeks from August 30, 2007 to March 18, 2008.[2]

[1] Appellant retired on disability effective May 11, 2007.

[2] On April 4, 2008 appellant requested a review of the written record. On May 27, 2008 she appealed to the Board. By decision dated August 18, 2008, the hearing representative affirmed the March 24, 2008 decision. The Board and the Office may not have concurrent jurisdiction over the same issue in a case. Consequently, the August 18, 2008 decision by the Office is null and void. *Douglas E. Billings*, 41 ECAB 880 (1990).

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* (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]

ANALYSIS

The Office accepted that appellant sustained a temporary aggravation of localized primary osteoarthritis of the right lower leg and a medial meniscus tear and lateral meniscus bucket handle tear of the right lower leg. Appellant underwent a medial and lateral meniscectomy and cartilage shaving with microfracture of the medial femoral condyle.

In a report dated March 5, 2007, Dr. Berthelsen diagnosed chronic residual knee pain caused by medial and lateral chondromalacia. He found no swelling, instability or loss of sensation and full range of motion. Dr. Berthelsen opined that appellant's condition was permanent and stationary.

In a report dated August 30, 2007, Dr. Garcha noted that appellant complained of intermittent pain in the right lateral calf with radiation. On examination he found no loss of strength or muscle mass. Dr. Garcha determined that appellant's knee showed no abnormalities other than right fibular head pain with palpation. He diagnosed right lateral calf pain and status post knee surgery.

On December 19, 2007 an Office medical adviser summarized the medical evidence and reviewed Dr. Garcha's normal findings on examination of appellant's knee except for pain on palpation of the right fibular head. He properly applied the A.M.A., *Guides* to Dr. Garcha's findings and determined that appellant had a 10 percent permanent impairment of the right lower extremity due to her partial medial and partial lateral meniscectomy.[7] The Office medical adviser found that she reached maximum medical improvement by August 30, 2007. Appellant did not submit any evidence supporting that she has more than a 10 percent permanent impairment of the right lower extremity.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id*. at § 10.404(a).

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

[7] The most specific method of assessing impairment due to meniscectomy is found in Chapter 17.2j of the A.M.A., *Guides*. Table 17-33 on page 546 indicates that, when both a partial medial and lateral meniscectomy are present, the lower extremity impairment is 10 percent.

On appeal, appellant contends that the physician who performed her impairment evaluation did not examine or speak to her. She also asserted that she could not stoop, squat or kneel with her knee and that it was difficult to sit through theatrical performances. The calculation of a schedule award, however, does not take into account factors such as employability or limitations on daily activities.[8] Under the Act, the maximum award for an impairment of the leg is 288 weeks of compensation.[9] Appellant's 10 percent impairment of the right leg entitled her to 10 percent of 288 weeks or 28.8 weeks of compensation. The medical evidence does not establish greater impairment.

CONCLUSION

The Board finds that appellant has no more than a 10 percent permanent impairment of the right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 24, 2008 is affirmed.

Issued: December 12, 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

[8] *James A. Castagno*, 53 ECAB 417 (2002).

[9] 5 U.S.C. § 8107(c)(2).