United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 07-1895**
	)	**Issued: February 22, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Spartanburg, SC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 4, 2007 appellant filed a timely appeal from a May 2, 2007 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination in this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she has greater than 20 percent left lower extremity impairment for which she received a schedule award.

FACTUAL HISTORY

On April 26, 2004 the Office accepted that appellant, then a 42-year-old city carrier, sustained an employment-related left rotator cuff sprain/strain and an injury to her left anterior cruciate ligament (ACL). On May 27, 2004 the Office accepted that she sustained a right rotator cuff sprain and bilateral osteoarthritis of the knees. Appellant stopped work on May 24, 2004 and on May 27, 2004 had surgery to her right shoulder. She was placed on the periodic rolls and on September 14, 2004 underwent left knee arthroscopic lysis of adhesions, repair of

microfracture of the lateral trochlear groove and major tricompartmental debridement of the left knee. In September 2004, appellant moved to Charlotte, North Carolina, and on January 11 and March 3, 2005 she had surgery to her right knee.[1] On April 11, 2006 she underwent surgery on both shoulders.[2]

Appellant submitted treatment notes from Dr. Jan H. Postma, Jr., a Board-certified orthopedic surgeon, dating from February 21, 2002 to December 22, 2003 which noted a history of left knee pain. On March 12, 2002 Dr. Postma stated that magnetic resonance imaging (MRI) scan of the left leg demonstrated a medial meniscus tear and advised that appellant would have surgical repair. An operative note dated March 18, 2002 indicated that the procedure consisted of arthroscopy, chondroplasty and synovectomy.

On October 19, 2006 the Office referred appellant to Dr. James F. Bethea, Board-certified in orthopedic surgery, regarding her injury-related disability and current work capacity. In a November 13, 2006 report, he noted a history of three left knee surgeries and that left knee x-ray revealed degenerative change in all three compartments. Dr. Bethea diagnosed Grade 4 osteoarthritis of the left knee. Appellant elected civil service retirement on December 15, 2006.

On March 3, 2007 appellant filed a schedule award claim. In a November 2, 2006 report, Dr. Postma provided an impairment rating in accordance with the guide of the orthopedic academy. He advised that x-ray demonstrated a two-millimeter interval in appellant's left knee and concluded that she had a 20 percent impairment of the left knee. By report dated December 11, 2006, Dr. Bartley McGehee provided examination findings.[3] He advised that appellant's left knee revealed mild effusion, pain with patella grind and tenderness to palpation about the patella. Range of motion was from 0 to 125 degrees. In a March 8, 2007 report, Dr. Walter Grady, a Board-certified osteopath specializing in orthopedic surgery, advised that examination of appellant's left knee revealed +1 effusion, crepitation on range of motion, 0 to 125 degrees of flexion extension, passive extension of 0 degrees, passive flexion of 120 degrees, pain with lateral McMurray's test, negative drawer and Lachman's tests. Medial and collateral ligaments were intact without evidence of instability. He concluded that, in accordance with the

[1] The Office continued to develop the claim and on April 21, 2005 referred her to Dr. Surendrapal S. Mac, a Board-certified orthopedic surgeon, for a second opinion evaluation. Finding a conflict in medical evidence between his opinion and that of appellant's attending physician, Dr. Richard J. Hawkins, also Board-certified in orthopedic surgery, regarding appellant's continued disability and work restrictions, on July 1, 2005 the Office referred appellant to Dr. Neal S. Taub, a Board-certified physiatrist, for an impartial medical evaluation. Based on Dr. Taub's reports and a functional capacity evaluation that appellant underwent on August 22, 2005, the employing establishment, on December 9, 2005, offered appellant a position for four hours of sedentary duty. She refused the position on December 20, 2005, alleging that she could not drive and was to have bladder surgery and, by letter dated February 14, 2006, the Office informed the employing establishment that the offered position was not suitable.

[2] By letter dated January 1, 2006, appellant requested that interstitial cystitis, depression and hypertension be accepted as employment related. Office regulations define a "claim" as a written assertion of an individual's entitlement to benefits under the Federal Employees' Compensation Act, submitted in an authorized manner. 20 C.F.R. § 10.5(c); *see Margie T. Smith (J.B. Smith)*, 56 ECAB 349 (2005). Thus, appellant's request would be considered a valid claim. The record before the Board, however, does not contain a final decision regarding this request and the Board's jurisdiction is limited to reviewing final decisions of the Office. 20 C.F.R. § 501(c); *see Karen L. Yaeger*, 54 ECAB 323 (2003).

[3] Dr. McGehee's credentials could not be ascertained.

American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[4] appellant had 30 percent left knee impairment.

In reports dated March 15 to April 24, 2007, an Office medical adviser reviewed the medical evidence of record. Because Dr. Postma used the orthopedic academy guide rather than the A.M.A., *Guides*, he had not properly rated appellant's impairment. He advised that Dr. Grady's March 8, 2007 report found decreased range of motion which represented 10 percent impairment under Table 17-10. However, under the Cross-Usage Chart, Table 17-2, impairment for arthritis could not be combined with impairment for loss of motion. The Office medical adviser determined that maximum medical improvement was reached six months after the September 14, 2004 surgery. He noted Dr. Bethea's finding of degenerative changes seen in all three knee compartments on x-ray and advised that, under Table 17-31 of the A.M.A., *Guides*, a two-millimeter cartilage interval would represent 20 percent impairment of the left knee. However, as she previously received a schedule award for 20 percent left lower extremity impairment on May 9, 2003 under file number 062057381, she was not entitled to any additional award for her left lower extremity impairment.[5]

On April 25, 2007 appellant requested that her schedule award be paid in a lump sum.

On May 2, 2007 appellant was granted a schedule award for 20 percent loss of use of the left arm, 21 percent loss of use of the right arm and 17 percent loss of use of the right leg. It was noted that she previously received a schedule award for 20 percent loss of use of the left leg and that she had no greater impairment to the extremity.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[6] and section 10.404 of the implementing federal regulations,[7] 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* 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] Office procedures indicate that referral to an Office

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

[5] Drs. Bethea, Postma, McGehee, Grady and the Office medical adviser provided findings and conclusions regarding all extremities.

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *See Joseph Lawrence, Jr., supra* note 4; *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* 523-64.

medical adviser is appropriate when a detailed description of the impairment from the attending physician is obtained.[10]

ANALYSIS

The Board finds that appellant does not have greater than the 20 percent left lower extremity impairment previously awarded. Table 17-31 of the A.M.A., *Guides* provides for impairments based on cartilage intervals determined by x-ray.[11] In this case, in accordance with Table 17-31, appellant has 20 percent left lower extremity impairment based on two millimeters of knee cartilage interval reported by Dr. Postma as seen on x-ray in his November 2, 2006 report. The Office medical adviser agreed with his rating in his March 23, 2007 report. While Dr. Grady also found loss of motion deficits, Table 17-2 of the A.M.A., *Guides* describes the types of impairment ratings that cannot be combined. It notes that loss of motion cannot be combined with an impairment rating for arthritis.[12] Furthermore, schedule awards under the Act are to be based on the A.M.A., *Guides*. While Dr. Grady stated that he used the A.M.A., *Guides*, he did not reference any specific tables or figures. It is unclear how he arrived at his conclusion that appellant had 30 percent left knee impairment. Therefore, his opinion is of diminished probative value.[13] The Office medical adviser properly concluded that appellant had 20 percent right lower extremity impairment.

There is no other medical evidence in the record that provides a proper rating for appellant's left lower extremity impairment. Appellant did not establish that she has more than the 20 percent impairment previously awarded.[14]

CONCLUSION

The Board finds that appellant has not established that she has more than 20 percent impairment of her left leg.

[10] *Thomas J. Fragale*, 55 ECAB 619 (2004).

[11] A.M.A., *Guides* 544.

[12] *Id*. at 526.

[13] *Deborah J. Cottle*, 53 ECAB 284 (2002).

[14] Under Table 17-2 of the A.M.A., *Guides*, diagnosis-based estimates can be combined with an impairment rating for arthritis. A.M.A., *Guides*, *supra* note 4 at 526. While Dr. Postma advised in March 2002 that appellant had a medial meniscus tear, his operative note dated March 18, 2002 indicated that the procedure performed was a chondroplasty and synovectomy, which are not covered under the diagnosis-based estimates found in Table 17-33. The procedure performed on September 14, 2004 consisted of lysis of adhesions, repair of microfracture of the lateral trochlear groove and major tricompartmental debridement of the left knee. These are not covered conditions under Table 17-33. *Id*. at 546. Appellant has therefore not established that she is entitled to an additional schedule award under Table 17-33.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 2, 2007 be affirmed.

Issued: February 22, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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