United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 07-1976**
	)	**Issued: January 28, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2007 appellant timely appealed from the Office of Workers' Compensation Programs' February 23, 2007 merit decision regarding her entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she has more than a 19 percent left leg impairment, for which she received a schedule award.

FACTUAL HISTORY

On August 20, 1992 appellant, then a 26-year-old letter carrier, filed a traumatic injury claim alleging that on that day she injured her left knee when she slipped on a set of stairs. The Office accepted her claim for torn left knee anterior cruciate ligament and torn lateral meniscus with left knee arthroscopy on December 18, 1992 and paid appropriate benefits. On January 26, 1993 appellant returned to light-duty work. She continues to work in this capacity.

On November 23, 2004 appellant requested a schedule award. In a September 2, 2004 medical report, Dr. Nicholas Diamond, a family practitioner, noted the history of injury and presented his examination findings, which included a physical examination along with subjective and objective factors. He diagnosed post-traumatic partial tear of the left knee anterior cruciate ligament; complex tear of the posterior horn of the lateral meniscus; status post arthroscopic surgery consisting of partial lateral meniscectomy; debridement of the anterior cruciate ligament and loose body removal; and chronic post-traumatic patellar tendinitis of the left knee. Dr. Diamond opined that appellant had 23 percent total left leg impairment. This consisted of 13 percent impairment for left thigh atrophy of three centimeters (cm) and 8 percent impairment for left calf atrophy of one cm; and 3 percent pain-related impairment. Dr. Diamond noted that he utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) to determine the percentage of impairment for leg atrophy (Table 17-6) and for pain-related impairment (Table 18-1). He stated that the reasons for his opinions were the history provided by appellant, the physical examination, and duties of the claimant's occupation and review of medical records.

In a January 25, 2005 report, an Office medical adviser reviewed the medical evidence and found that appellant reached maximum medical improvement on September 2, 2004. The Office medical adviser used the diagnosis-based estimate of impairment provided by the A.M.A., *Guides* and opined that appellant had an 11 percent left leg impairment. This was comprised of two percent impairment for partial lateral meniscectomy; seven percent impairment for mild cruciate ligament laxity; and three percent pain-related impairment. The Office medical adviser opined that, under the A.M.A., *Guides*, section 17.2d, page 530, it was incorrect for Dr. Diamond to rate an impairment based on leg muscle atrophy.

By decision dated May 24, 2005, the Office granted appellant a schedule award for 11 percent left lower extremity impairment.

On May 27, 2005 appellant disagreed with the Office's May 24, 2005 decision and requested an oral hearing, which was held December 7, 2005. By decision dated February 22, 2006, an Office hearing representative vacated the Office's May 24, 2005 decision. The Office hearing representative found that the Office medical adviser did not provide sufficient rationale to support his finding that the method of impairment assessment utilized by Dr. Diamond for leg muscle atrophy was inappropriate. Thus, the case was remanded for additional development and the issuance of a *de novo* decision.

In accordance to the Office hearing representative's remand instructions, the Office prepared a statement of accepted facts and forwarded the case to another Office medical adviser to review the case and provide a reasoned medical opinion as to why Dr. Diamond's opinion did not conform to the A.M.A., *Guides*. In a report dated August 16, 2006, the Office medical adviser opined that the final left lower extremity impairment was 19 percent with a date of maximum medical improvement of September 2, 2004. He found 16 percent lower extremity impairment related to thigh and calf atrophy. The Office medical adviser utilized the A.M.A., *Guides*, and found, under Table 17-6, page 530, a three cm thigh atrophy equated to a 13 percent impairment and, under Table 17-6, page 530, a one cm calf atrophy equated to a 3 percent impairment. He also found that, under Chapter 18, page 573, appellant had three percent impairment for pain. The Office medical adviser combined the 16 percent impairment related to

thigh and calf atrophy with the 3 percent impairment for pain and found 19 percent total left lower extremity impairment.

By decision dated August 18, 2006, the Office found that appellant was entitled to 19 percent total left leg impairment. Thus, it awarded an additional 8 percent left leg impairment to the 11 percent left lower extremity impairment previously awarded.

On August 25, 2006 appellant disagreed with the Office's August 18, 2006 decision and requested an oral hearing, which was held December 11, 2006. At the hearing, her attorney argued that a conflict in medical opinion existed between the Office medical adviser and Dr. Diamond with regard to left calf atrophy. No new evidence was submitted.

By decision dated February 23, 2007, an Office hearing representative affirmed the Office's August 18, 2006.

On appeal, appellant's attorney argues that a conflict in medical opinion exists between the Office medical adviser and Dr. Diamond with regard to left calf atrophy.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] sets 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 to 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 implementing regulation as the appropriate standard for evaluating schedule losses.[3]

The A.M.A., *Guides* provide that in evaluating lower extremity impairment, it is the responsibility of the evaluating physician to explain in writing why a particular method to assign the impairment rating was chosen. When uncertain about which method to choose, the evaluator should calculate the impairment using different alternatives and choose the method or combination of methods that gives the most clinically accurate impairment rating.[4]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *Id.*

[4] *Richard F. Williams*, 55 ECAB 343, 347 (2004).

percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[5]

ANALYSIS

In the current claim, the Office accepted that appellant sustained torn left knee anterior cruciate ligament and torn lateral meniscus as a result of her work-related injury and authorized a left knee arthroscopy. Appellant subsequently requested a schedule award. In his September 2, 2004 report, appellant's treating physician, Dr. Diamond, opined that appellant had 23 percent total left lower extremity impairment based on 20 percent impairment for leg muscle atrophy and 3 percent pain impairment. An Office medical adviser reviewed Dr. Diamond's findings and, while he concurred with his determination that appellant had 3 percent pain impairment, found that appellant only had 16 percent impairment for leg muscle atrophy, for 19 percent total left leg impairment. Appellant's attorney argues that a conflict in medical opinion evidence was created due to the differences in leg muscle atrophy impairment (specifically the impairment resulting from the calf atrophy) and the case should be remanded to an impartial medical specialist to resolve the conflict.

Dr. Diamond found that appellant's leg muscle atrophy was comprised of three cm thigh atrophy and one cm calf atrophy. Both he and the Office medical adviser properly found that, under Table 17-6, page 530 of the A.M.A., *Guides*, three cm thigh atrophy equated to 13 percent impairment. The difference in opinion, however, resulted in the amount of impairment arising from one cm calf atrophy. Under Table 17-6, page 530 of the A.M.A., *Guides*, Dr. Diamond found that one cm calf atrophy equated to eight percent impairment while the Office medical adviser found it equated to three percent impairment.

Under Table 17-6, page 530 of the A.M.A., *Guides*, a calf atrophy of 1 to 1.9 cm can range from three to eight percent lower extremity impairment. One cm of calf atrophy is at the very bottom of the range of three to eight percent impairment. The Office medical adviser accorded three percent impairment or the bottom impairment rating for one cm calf atrophy. The Office medical adviser's opinion that appellant is entitled to three percent impairment seems more appropriate based on the fact that the one cm calf atrophy is at the bottom of the range provided by the A.M.A., *Guides.* Thus, the Office medical adviser's opinion that appellant has a three percent impairment rating based on calf atrophy is a proper interpretation of the A.M.A., *Guides.* Dr. Diamond accorded eight percent impairment or the top impairment rating. The A.M.A., *Guides* provides that the examiner must use his clinical judgment to estimate the appropriate percentage within this range.[6] Dr. Diamond did not adequately explain how he derived his impairment rating within the range of values shown in Table 17-6. As such, the impairment rating made by Dr. Diamond for calf atrophy is of diminished probative value and is insufficient to provide a conflict of medical opinion with the Office medical adviser.

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

[6] *James E. Earle*, 51 ECAB 567 (2000).

Under the Combined Values Chart on page 604 of the A.M.A., *Guides*, the combined leg muscle atrophy results in a 16 percent impairment (13 percent thigh atrophy impairment combined with 3 percent calf atrophy impairment). The Board also notes that both the Office medical adviser and Dr. Diamond added three percent pain impairment under Chapter 18 of the A.M.A., *Guides*. This was done in error as the Board has held that a separate pain calculation under Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain as outlined in Chapter 13, 16 and 17 of the fifth edition of the A.M.A., *Guides*.[7] Neither Dr. Diamond nor the Office medical adviser explained why any pain related to appellant's employment-related condition could not be adequately rated in Chapter 17 of the A.M.A., *Guides*. Thus, the medical evidence conforming with the A.M.A., *Guides* establishes that appellant has 16 percent permanent impairment of the left leg. Consequently, appellant has not established entitlement to a schedule award greater than the 19 percent impairment awarded to her left lower extremity by the Office.

CONCLUSION

The Board finds that appellant does not have more than a 19 percent impairment of her left lower extremity for which she received a schedule award.

[7] *T.H.*, 58 ECAB ___ (Docket No. 06-1500, issued January 31, 2007). *See L.H.*, 58 ECAB ___ (Docket No. 06-1691, issued June 18, 2007) (the impairment ratings in the body organ system chapters of the A.M.A., *Guides* make allowance for any accompanying pain).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2007 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 28, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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