

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

---

C.L., Appellant )

and )

DEPARTMENT OF JUSTICE, EXECUTIVE )  
OFFICE OF IMMIGRATION REFORM, )  
Miami, FL, Employer )

---

**Docket No. 07-2188  
Issued: September 9, 2008**

*Appearances:*  
*Appellant, pro se*  
*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 30, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 21, 2007 schedule award decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

**ISSUE**

The issue is whether appellant is entitled to a schedule award for more than a 37 percent permanent impairment of the right leg.

**FACTUAL HISTORY**

On August 21, 2002 appellant, a 59-year-old legal assistant, injured her right knee, right hip and lower back when she slipped and fell to the floor. She filed a claim for benefits, which the Office accepted for lumbar sprain/strain, sprain/strain of the sacroiliac ligament and contusions of the back, right hip and right knee.

On May 7, 2003 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right leg.

On June 6, 2003 the Office granted appellant a schedule award for a 17 percent permanent impairment to her right leg for the period April 24, 2003 to March 31, 2004, for a total of 48.96 weeks of compensation.

On February 25, 2005 appellant underwent a total right knee arthroplasty. The surgery was performed by Dr. Richard L. Levitt, Board-certified in orthopedic surgery.

In a report dated August 18, 2005, Dr. Levitt stated that appellant continued to have symptoms and some medical discomfort in her right knee. He advised that she had reached maximum medical improvement and opined that she had a 12 percent impairment.

On August 23, 2005 appellant filed a Form CA-7 claim for an additional schedule award based on a partial loss of use of her right leg extremity.

In a report dated September 15, 2005, the Office medical adviser found that appellant had a 37 percent impairment of the right lower extremity based on a good result from her February 2005 total right knee arthroplasty pursuant to Table 17-35 at page 549 and Table 17-33 at page 547 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*) (fifth edition).

On November 1, 2005 the Office granted appellant an additional 20 percent schedule award, which amounted to a total 37 percent permanent impairment of the right leg. The award covered the period August 18, 2005 to September 26, 2006, for a total of 57.6 weeks of compensation.

On April 6, 2006 the Office awarded appellant compensation for a recurrence of disability; in order to avoid simultaneous payments, the Office interrupted her schedule award to permit payment of wage-loss compensation. At that time 182 of the 403.20 days of compensation had been paid, leaving 221.2 days of compensation to be paid.

In a report dated December 7, 2006, Dr. Jorge Cabrera, Board-certified in orthopedic surgery, stated that appellant's right knee had progressively healed and had improved to the point where she was fully ambulatory and could return to work for eight hours per day with restrictions on kneeling, squatting and no lifting exceeding 20 pounds. He stated:

“[Appellant] will have a 15 percent ... permanency of the body as a whole. This is increased from what she had with Dr. Levitt and increased additionally because of the process of having to go through the revision as well as the fracture of the tibia that was encountered. The patient is at maximum medical improvement at this time. The patient's rating is as per [the A.M.A., *Guides*].”

By letter dated January 20, 2007, appellant asked the Office to reinstate her schedule award payments.

In an Office memorandum dated January 31, 2007, the Office noted that appellant had requested that it restart her schedule award payments. The Office indicated it would refer the case to an Office medical adviser.

By letter dated March 7, 2007, the Office informed appellant that because she had recently returned to work and was therefore no longer receiving wage-loss compensation, it was reinstating her schedule award payments as of December 7, 2006 until July 16, 2007, for the remaining period of 221.2 days of her schedule award.

On March 19, 2007 appellant filed a Form CA-7 claim for an additional schedule award.

By decision dated May 21, 2007, the Office denied modification of the November 1, 2005 Office decision. The Office found that the medical evidence of record did not support an award greater than that already awarded by the Office.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>2</sup> However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.<sup>3</sup>

### **ANALYSIS**

In its November 1, 2005 decision, the Office relied on the Office medical adviser's finding of a 37 percent impairment of the right leg based on Table 17-35 at page 547 of the A.M.A., *Guides*, the table used for determining impairment due to knee replacements. Relying on the opinion of Dr. Levitt, appellant's attending physician and the surgeon who performed the February 2005 surgery, the Office medical adviser noted that appellant's surgery had produced a "good result" for the right knee; this yielded a 37 percent impairment at Table 17-35, page 547. This finding was based on the evidence of record at that time and was unrefuted. The Board finds that the Office properly determined that appellant had an overall 37 percent impairment rating of the right leg, following total knee arthroplasty with a good result, pursuant to Table 17-35 of the A.M.A., *Guides*.

Subsequent to the Office's decision, appellant requested reconsideration and submitted Dr. Cabrera's December 7, 2006 report, which rated a 15 percent whole person impairment for

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 5 U.S.C. § 8107(c)(19).

<sup>3</sup> 20 C.F.R. § 10.404.

appellant's right leg. However, this rating is not probative, as the Act does not provide for permanent impairment of the whole person.<sup>4</sup> As appellant did not submit any medical evidence to support an additional schedule award greater than the 37 percent for the right leg already awarded, the Board will affirm the Office's May 21, 2007 decision.

**CONCLUSION**

The Board finds that appellant has no more than a 37 percent impairment of the right leg.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 21, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 9, 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

---

<sup>4</sup> See, e.g., *Timothy J. McGuire*, 34 ECAB 189 (1982).