United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 08-1502**
	)	**Issued: February 19, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Jersey City, NJ, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 28, 2008 appellant, through her representative, filed a timely appeal from the December 12, 2007 merit decision of the Office of Workers' Compensation Programs' hearing representative, which denied a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant's May 4, 2000 employment injury caused permanent impairment to her right lower extremity.

FACTUAL HISTORY

On May 4, 2000 appellant, then a 55-year-old postal clerk, sustained an injury in the performance of duty: "Right knee was hit by steel bar door magnet from top of administration entrance upon entering." A postal physician saw her that day and diagnosed a contusion of the right inferior patellar ligament. A consulting orthopedic surgeon examined her five days later. He noted that the incident caused no immediate pain, but the knee worsened over time. The

doctor diagnosed knee sprain.[1] The Office accepted appellant's claim for right knee sprain and paid compensation for wage loss.

On October 17, 2005 appellant, through her representative, filed a claim for a schedule award. She submitted in support thereof the July 25, 2005 report of Dr. David Weiss, an osteopath, who related appellant's history and current complaints. Dr. Weiss noted the following findings on physical examination of the right knee:

> "Examination of the right knee reveals no gross effusion is noted. Range of motion is 0-140/140 degrees. There is tenderness noted along the undersurface of the medial and lateral patellar facets. [Appellant] is nontender over the medial and lateral joint lines. Patellofemoral compression produces pain but no crepitus. Valgus and varus stress tests produce firm end points. Drawer and Lachman signs are negative. Apley grind is negative. McMurray sign is negative."

Dr. Weiss reported that a May 24, 2000 magnetic resonance imaging (MRI) scan was found to be normal. He diagnosed, among other things, post-traumatic internal derangement of the right knee, post-traumatic chondromalacia patella of the right knee and a derivative injury to the right foot with plantar fasciitis and aggravation of preexisting quiescent calcaneal spur. Dr. Weiss found that appellant had a 15 percent permanent impairment of her right lower extremity due to IV/V motor strength deficit in right ankle dorsiflexion with a pain-related impairment of 3 percent.

An Office medical adviser reviewed Dr. Weiss' report and found no impairment due to the accepted right knee sprain. He noted that appellant had a good examination under Dr. Weiss with no focal knee deficits.

The Office found a conflict in medical opinion and referred the case to Dr. Robert Dennis, a Board-certified orthopedic surgeon, for an impartial medical examination. On December 27, 2006 Dr. Dennis related appellant's history of injury and subsequent medical treatment. He listed appellant's current subjective complaints and his findings on physical examination. Examination of both knees revealed the following:

> "Both knees had a full active and passive extension to 180 degrees. Both knees could flex in a symmetric fashion to 130 degrees. Both knees were checked for effusion. They were normal. The right knee showed no evidence of maltracking. We utilized osteophony of both knees on the focused on the patella. The amount of crepitus, which was audible only through the stethoscope, was completely equal on both sides and considered very mild. There was no hesitation on motion of the right knee through its entire range and no particular difference or abnormality in the amount of crepitus. There was no medial joint line tenderness to the right knee or to the left. Quadriceps function and measurements were equal bilaterally."

[1] There was no ecchymosis or effusion. Range of motion was from -10 degrees full extension to 100 degrees flexion. There was lateral joint line tenderness, a positive McMurray test, patellar crepitus, pain with resisted extension and a click with flexion-extension. X-rays were negative.

Summarizing the knee examination, Dr. Dennis reported that both knees showed completely normal and healthy evaluation. There was no difference whatsoever between them. Dr. Dennis remarked that the old contusions that might have occurred from the injury had resolved. He noted that the tenderness Dr. Weiss reported along the undersurface of the medial and lateral patella facets was no longer evident on multiple examinations of the area.

Reviewing objective studies, Dr. Dennis reported that the May 9, 2000 right knee x-rays were completely normal and "pristine," with no evidence of pathology, spurs or inflammation under the patella. Joint spaces were well maintained. Dr. Dennis reported that the May 24, 2000 MRI scan was completely normal. The reports of the right knee were also normal, showing no evidence of arthritis. Similarly, the x-ray was read as showing no evidence of arthritis. There was no evidence of effusion "and these were done early on close to the time of injury."

Dr. Dennis concluded that appellant had no impairment of her right lower extremity due the accepted knee injury. Appellant's physical examination was "extraordinarily benign" with no positive clinical findings of the right knee, and there was no evidence of residual chondromalacia of the patella or patellofemoral arthritis. "If it was present before," Dr. Dennis stated, "it was transient, well treated and has completely resolved without residual."

In a decision dated April 5, 2007, the Office denied appellant's claim for a schedule award. It found that the medical evidence failed to demonstrate a measurable impairment.

On December 12, 2007 an Office hearing representative affirmed the denial of appellant's claim. The hearing representative found that the weight of the medical evidence rested with the thorough, well-rationalized opinion of Dr. Dennis. The hearing representative further found that the medical record did not support that appellant was entitled to a schedule award for the right lower extremity as a result of her work-related injury.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[2] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment.[3]

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[4] A claimant seeking a schedule award, therefore, has the burden of establishing that her accepted

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

employment injury caused permanent impairment of a scheduled member, organ or function of the body.[5]

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.[6] If medical reports that are equally well reasoned support inconsistent determinations of an issue under consideration, the Office will direct the employee to undergo a referee examination to resolve the issue.[7]

ANALYSIS

The Office accepted that appellant sprained her right knee in the performance of duty on May 4, 2000. So when she filed her claim for a schedule award on October 17, 2005, it was her burden to establish by the weight of the medical evidence that this sprain had caused a permanent impairment to her right lower extremity.

To support her claim, appellant submitted a July 25, 2005 report from her osteopath, Dr. Weiss, who found a 15 percent permanent impairment of the right lower extremity, but he did not explain how this impairment arose from a sprained knee. The only positive findings he made on physical examination of the right knee were tenderness along the undersurface of the medial and lateral patellar facets and pain on patellofemoral compression. Dr. Weiss, again, did not explain how either finding was connected to a sprain that occurred five years earlier. His diagnoses of post-traumatic internal derangement of the right knee, post-traumatic chondromalacia patella of the right knee and derivative injury to the right foot are wholly unsupported by medical rationale.

Because Dr. Weiss offered no sound medical reasoning, the Board finds that his July 25, 2005 report is of little probative value in establishing that appellant's May 4, 2000 right knee sprain caused any permanent impairment to the right lower extremity.[8] Not only did this evidence not discharge appellant's ultimate burden of proof to establish entitlement to a schedule award, it lacked sufficient probative value to warrant the application of section 8123 of the Act. The evidence was unrationalized. The Board therefore finds no true conflict in the medical opinion evidence warranting further development under section 8123.[9]

For this reason, Dr. Dennis, the Board-certified orthopedic surgeon, does not hold the status of an impartial medical specialist. His opinion does not carry the special weight normally

[5] *E.g.*, *Russell E. Grove*, 14 ECAB 288 (1963) (where medical reports from the attending physicians showed that the only leg impairment was due to arthritis of the knees, which was not injury related, the claimant failed to meet his burden of proof to establish entitlement to a schedule award).

[6] 5 U.S.C. § 8123(a).

[7] 20 C.F.R. § 10.502 (1999).

[8] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value).

[9] *See* text accompanying note 7 above. A true conflict requires reasoned medical reports.

accorded such. Dr. Dennis is, instead, a second-opinion physician. He examined appellant on December 27, 2006, about a year and a half after Dr. Weiss and reported a completely normal and healthy evaluation. Dr. Dennis stated that the old contusions that might have occurred had resolved and appellant no longer had any trace of the tenderness Dr. Weiss reported. Given appellant's extraordinarily benign physical examination and normal diagnostic studies, Dr. Dennis concluded that appellant had no impairment of her right lower extremity due the accepted knee injury.

The Board finds that Dr. Dennis' opinion carries the weight of the medical opinion evidence on whether appellant's May 4, 2000 knee sprain caused permanent impairment to her right lower extremity. This evidence appears more consistent, logical and well reasoned than the evidence given by Dr. Weiss and it only further weakens appellant's claim. To be clear, even without Dr. Dennis' opinion, appellant has not met her burden of proof. On these grounds, then, the Board will affirm the Office hearing representative's December 12, 2007 denial of a schedule award.

CONCLUSION

The Board finds that appellant has not met her burden to establish that the May 4, 2000 employment injury caused permanent impairment to her right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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