

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

C.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Milwaukee, WI, Employer)

Docket No. 08-1825

Issued: February 5, 2009

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 17, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 12, 2008, which granted her a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than a seven percent permanent impairment of the left lower extremity.

FACTUAL HISTORY

On May 26, 2005 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim alleging that, on February 23, 2005, while delivering her mail route she experienced left leg and knee pain. She stopped work on May 19, 2005 and returned to a light-duty job on February 13, 2006. The Office accepted appellant's claim for a lesion of the medial femoral condyle and authorized arthroscopic surgery which was performed on May 31, 2005.

Appellant came under the treatment of Dr. James R. Flesch, a Board-certified orthopedic surgeon, who treated her for left knee pain. Dr. Flesch noted an x-ray of the left knee demonstrated no abnormalities and diagnosed left knee pain with possible internal derangement. On May 25, 2005 he advised that appellant's left knee gave way as she was walking down steps causing her to fall. A May 23, 2005 magnetic resonance imaging (MRI) scan of the left knee revealed a tear of the medial meniscus and a questionable tear of the lateral meniscus. On May 31, 2005 Dr. Flesch performed arthroscopic surgery on the left knee, chondroplasty of the medial femoral condyle and diagnosed medial femoral condyle defect of the left knee. In reports dated June 17 and 30, 2005, he diagnosed osteochondral lesion of the left medial femoral condyle. Dr. Flesch returned appellant to sedentary work on August 1, 2005. On April 5, 2006 he opined that appellant reached maximum medical improvement and diagnosed medial compartment osteoarthritis of the left knee and status post medial femoral chondroplasty. On January 10, 2007 Dr. Flesch provided permanent sedentary restrictions.

On October 6, 2007 appellant filed a claim for a schedule award. On April 8, 2008 Dr. Flesch advised that appellant was post chondroplasty of the medial femoral condyle and reached maximum medical improvement on April 5, 2006. He noted that appellant's pain symptoms were controlled by medication but she still experienced episodes of swelling. Dr. Flesch noted findings upon physical examination of no limp, normal alignment, no definite effusion, range of motion of 0 to 115 degrees on the right compared to 0 to 140 degrees on the left, mild crepitus was present and varus/valgus strain was zero degrees with slight medial laxity with valgus strain on the left. He noted that standing x-rays were obtained and the sunrise views revealed no narrowing of the patellofemoral space, the standing upright view demonstrated narrowing of the medial compartment of the left knee compared to the right, a small anterior osteophyte formation on the medial tibial plateau and the medial joint compartment measured three millimeters (mm). Dr. Flesch noted that, under the fifth edition of the of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ (A.M.A., *Guides*), appellant sustained a seven percent impairment of the left lower extremity and referenced Table 17-31, page 544.

In a report dated May 8, 2008, the Office medical adviser agreed that appellant sustained seven percent impairment of the left lower extremity. He noted that maximum medical improvement occurred on April 5, 2006. Dr. Flesch noted that appellant had four percent impairment for Grade 3 pain in the distribution of the femoral nerve to the left knee² and three percent impairment for arthritis based on cartilage interval.³ The medical adviser noted using the Combined Values Chart to arrive at seven percent impairment of the left lower extremity.

In a decision dated June 12, 2008, the Office granted appellant a schedule award for seven percent permanent impairment of the left lower extremity. The period of the schedule award was from April 5 to August 24, 2006.

¹ A.M.A., *Guides* (5th ed. 2001).

² *Id.* at 482, 552, Table 16-10, 17-37.

³ *Id.* at 544, Table 17-31.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulations⁵ 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 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 regulations as the appropriate standard for evaluating schedule losses.

ANALYSIS

On appeal, appellant contends that she has greater impairment than the seven percent rating of the left lower extremity.

In a report dated April 8, 2008, Dr. Flesch noted that appellant's pain symptoms were controlled by medication but she still experienced episodes of swelling. He noted a range of motion of 0 to 115 degrees on the right, 0 to 140 degrees on the left and mild crepitus. Dr. Flesch found that standing x-rays with sunrise views revealed no narrowing of the patellofemoral space, the standing upright view demonstrated narrowing of the medial compartment of the left knee compared to the right, a small anterior osteophyte formation on the medial tibial plateau and a medial joint compartment measuring three mm. He advised that in accordance with the A.M.A., *Guides* appellant had seven percent impairment of the left lower extremity pursuant to Table 17-31, page 544.

The Office's medical adviser reviewed Dr. Flesch's findings and correlated them to provisions in the A.M.A., *Guides*. On report dated May 8, 2008 he advised that appellant sustained seven percent impairment of the left lower extremity. For sensory deficit or pain, appellant was classified as Grade 3, for a 60 percent sensory deficit or pain,⁶ in the distribution of femoral nerve. The A.M.A., *Guides* provides that the maximum allowed for total impairment of the femoral nerve is two percent.⁷ The Board notes that, when the maximum for the femoral nerve, 2 percent, is multiplied by the 60 percent allowed for a Grade 3 sensory deficit, this yields 1.2 percent impairment, rounded to 1 percent, for sensory loss.⁸ The medical adviser calculated that appellant had four percent impairment of the left lower extremity for sensory deficit or pain in the distribution of the femoral nerve, under Table 16-10 of the A.M.A., *Guides*.⁹ Therefore, he incorrectly calculated appellant's impairment for sensory deficit or pain in the distribution of

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ A.M.A., *Guides* at 482, Figure 16-10.

⁷ *Id.* at 552, Figure 17-37.

⁸ *Id.* at 482, 552, Table 16-10, 17-37.

⁹ *Id.* at 482, Figure 16-10.

the femoral nerve. Additionally, the medical adviser incorrectly found that appellant had three percent impairment for an arthritis cartilage interval of three mm. The A.M.A., *Guides* provides for seven percent impairment of the lower extremity, not three percent, when the arthritis cartilage interval is three mm based on x-ray.¹⁰

Using the Combined Values Chart,¹¹ this revised calculation would provide appellant with eight percent permanent impairment of the left lower extremity. The Board will modify the Office's June 12, 2008 decision to reflect that appellant has eight percent permanent impairment to her left knee.

On appeal, appellant asserts that the amount of the schedule award is insufficient as she can no longer work. The Board has held, however, that the amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.¹²

CONCLUSION

The Board finds that appellant has no more than eight percent permanent impairment of the left lower extremity.

¹⁰ *Id.* at 544, Figure 17-31.

¹¹ *Id.* at 605.

¹² *Ruben Franco*, 54 ECAB 496 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2008 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: February 5, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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