

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

J.F., Appellant)
and) Docket No. 09-1105
U.S. POSTAL SERVICE, POST OFFICE,) Issued: November 24, 2009
Detroit, MI, Employer)

)

Appearances: Case Submitted on the Record
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On March 16, 2009 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated April 7, 2008 and February 25, 2009 denying her claim for a schedule award. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has sustained any permanent impairment to a scheduled member of her body causally related to her accepted bilateral knee condition, thereby entitling her to a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

On July 10, 1985 appellant, then a 37-year-old letter carrier, injured both knees when she slipped and fell. She filed a claim for benefits on July 12, 1985. The Office accepted the claim and handled it administratively, approving conservative medical care and treatment up to \$1,500.00. Appellant retired from the employing establishment in 1998.

On June 9, 2006 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left and right lower extremities. Upon receipt of her schedule award claim, the Office reopened her claim. On January 23, 2008 it accepted the condition of bilateral knee contusion with abrasions.

In order to determine whether appellant had any permanent impairment causally related to an accepted condition, the Office referred her to Dr. Paul J. Drouillard, an osteopath. In a report dated November 2, 2007, Dr. Drouillard opined that appellant had no impairment of her lower extremities causally related to her bilateral knee condition under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (the A.M.A., *Guides*). He noted mild lateral tracking of the patella with some mild degenerative arthritis in both knees. Dr. Drouillard stated, however, that this was not related to appellant's employment. He advised that appellant had an extremely common structural abnormality which was simply related to the tracking of her kneecaps and opined that her symptoms stemmed from obesity, age and a structural abnormality.

In a February 5, 2008 report, Dr. Charles Johnson, Board-certified in orthopedic surgery, noted that he had been treating appellant for a left foot condition stemming from a 1985 work injury. He stated findings on examination, noted that radiographic findings indicated joint space narrowing and arthritic spurring and diagnosed severe hallux limitus due to joint space narrowing. Dr. Johnson advised that the left metatarsal phalangeal joint could lead to painful ambulation.

In a report dated February 19, 2008, Dr. Willie J. Pettiway, Board-certified in internal medicine and appellant's treating physician, noted that a January 2008 magnetic resonance imaging (MRI) scan indicated moderate destructive arthritis in both knees, with articular erosions, bony destruction and ligamentous damage. He attributed this condition to a chronic repetitive injury, wear and tear from her years as a letter carrier. Dr. Pettiway advised that appellant was totally disabled due to employment factors and had been unable to obtain gainful employment since her 1998 retirement.

By decision dated April 7, 2008, the Office denied appellant's claim for a schedule award. It stated that appellant failed to submit medical evidence sufficient to establish that she had any permanent impairment stemming from her accepted bilateral knee condition. In addition, the Office noted that Dr. Drouillard found, based on his November 2007 evaluation, that appellant had no ratable impairment causally related to her bilateral knee condition.

By letter dated April 28, 2008, appellant requested an oral hearing, which was held on December 9, 2008. In support of her request, she submitted a June 2, 2008 report from Dr. Mitchell Z. Pollak, Board-certified in orthopedic surgery, who stated findings on examination, noted the history of injury and reviewed the February 2008 MRI scan. Dr. Pollak indicated that appellant walked with a limp; based on this finding, he rated seven percent whole person impairment for gait derangement pursuant to Table 17-5 at page 529 of the A.M.A., *Guides*.

By decision dated February 25, 2009, an Office hearing representative affirmed the April 7, 2008 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ sets 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.² 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.³ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁴

ANALYSIS

In the instant case, the Office determined that appellant had no ratable permanent impairment of her lower extremities causally related to her bilateral knee condition based on Dr. Drouillard's November 2, 2007 report. While Dr. Drouillard noted mild discomfort and symptomatology consistent with mild degenerative arthritis in both knees, he opined that this was not related to employment factors. He advised that appellant's bilateral knee symptoms were attributable to obesity, age and a structural abnormality.

Appellant also submitted reports from Dr. Johnson and Dr. Pettiway. In a claim for permanent impairment under the Act, the employee has the burden of proving that the condition for which a schedule award is sought is causally related to his or her federal employment.⁵ While the accepted conditions in this case are bilateral knee contusions and abrasions, neither of these physicians provided a medical opinion explaining how appellant's accepted conditions caused permanent impairment. Furthermore, the reports from these physicians, did not contain an impairment rating which correlated with the A.M.A., *Guides*.⁶ In addition, these reports do not relate their findings to the applicable tables and charts of the A.M.A., *Guides*. The Office properly determined that the findings from these physicians did not provide a basis for a schedule award under the Act. Based on this evidence, the Office properly found that appellant had no ratable permanent impairment of her right or left lower extremity causally related to her accepted bilateral knee condition, pursuant to the A.M.A., *Guides*.

Following the April 7, 2008 decision, appellant submitted the June 2, 2008 report from Dr. Pollak, who rated a seven percent impairment based on gait derangement. Again, Dr. Pollak

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

² *Id.* at § 8107(c)(19).

³ 20 C.F.R. § 10.404.

⁴ *Veronica Williams*, 56 ECAB 367, 370 (2005).

⁵ *See id.*

⁶ The Board notes that Dr. Johnson's February 2008 report pertained to a left foot condition which was not accepted by the Office.

did not provide medical rationale causally relating this condition to the accepted injury. Also, as his report evaluated whole person impairment, it was of limited probative value.⁷ As Dr. Pollak offered a mere conclusion regarding the degree of appellant's impairment, without explaining the basis for each rating factor, the Office hearing representative properly found that his opinion did not present a basis for an additional schedule award for the left lower extremity.⁸

As there is no other medical evidence establishing that appellant sustained any permanent impairment of a schedule member, the Office properly found that appellant was not entitled to a schedule award due to her accepted bilateral knee condition. The Board will affirm the April 7, 2008 and February 25, 2009 decisions.

CONCLUSION

The Board finds that appellant has not established that she is entitled to a schedule award for permanent impairment resulting from her accepted bilateral knee injury.

⁷ The Board notes that the Act does not allow for "whole man" impairment schedule awards. *Janae J. Tripplette*, 54 ECAB 792 (2003).

⁸ The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. See *Peter C. Belkind*, 56 ECAB 580, 585 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 25, 2009 and April 7, 2008 be affirmed.

Issued: November 24, 2009
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