United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 09-765**
	)	**Issued: February 19, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Burlington, 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:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 27, 2009 appellant filed a timely appeal from a December 30, 2008 schedule award decision of the Office of Workers' Compensation Programs. 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 15 percent impairment of the right leg for which she received a schedule award.

FACTUAL HISTORY

On July 28, 1998 appellant, then a 33-year-old clerk, filed a traumatic injury claim alleging that she injured her right knee while lifting a bucket of mail. The Office accepted her claim for right knee sprain and authorized arthroscopic surgery. Appellant did not stop work but returned to a light-duty position.

Appellant came under the treatment of Dr. Ronald Krasnick, a Board-certified orthopedic surgeon.[1] On April 10, 2000 Dr. Krasnick performed arthroscopic surgery with release of lateral retinaculum and diagnosed torn medial meniscus and chondromalacia of the right knee. In reports dated July 18, 2000 to January 16, 2001, he noted patellofemoral crepitus and tenderness of the right knee and advised that appellant reached maximum medical improvement.

On June 21, 2001 appellant requested a schedule award. In a May 15, 2001 report, Dr. Nicholas Diamond, an osteopath, advised that she reached maximum medical improvement on May 10, 2001. Right knee examination revealed portal arthroscopy scars, peripatellar tenderness, crepitus, medial mid line and lateral mid line tenderness and positive valgus and varus stress tests. Dr. Diamond noted a normal sensory examination and motor strength testing revealed a grade of 4 out of 5 involving the right lower extremity and a grade of 5 out of 5 for the left lower extremity. He diagnosed post-traumatic right knee posterior horn medial meniscus tear and post-traumatic right knee chondromalacia patella. Dr. Diamond stated that based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[2] (A.M.A., *Guides*) appellant had 12 percent impairment for Grade 4 motor strength deficit of the right quads (knee extension),[3] 17 percent impairment for right knee collateral ligament laxity[4] and 5 percent impairment for the right patellofemoral knee pain/crepitance (arthritis)[5] or at total 31 percent impairment of the right lower extremity.

On August 16, 2001 an Office medical adviser reviewed the medical evidence of record. He noted the impairment rating provided by Dr. Diamond and advised that the conditions of medial and lateral varus and valgus instability were not present at the time of surgery and could not have developed from the work incident. The medical adviser found that appellant had 12 percent right leg impairment based on Grade 4 motor strength deficit of the right quadriceps[6] and 5 percent for patellofemoral knee pain/crepitance[7] or a total of 17 percent impairment to the right leg.

The Office found a conflict in medical opinion arose between Dr. Diamond and the Office medical adviser regarding the extent of permanent impairment. On September 14, 2001 it initially referred appellant to Dr. Howard Zeidman, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. Based on his report, the Office granted her a schedule award for 15 percent right leg impairment on November 15, 2001. However, this award was vacated in a November 7, 2002 decision of an Office hearing representative. The

[1] An August 4, 1998 magnetic resonance imaging scan of the right knee showed a tear of the posterior horn of the medial meniscus and minimal joint effusion.

[2] A.M.A., *Guides* (5th ed. 2001).

[3] *Id.* at 532, Table 17-8.

[4] *Id.* at 546, Table 17-33.

[5] *Id.* at 544, Table 17-31.

[6] *Id.* at 532, Table 17-8.

[7] *Id.* at 544, Table 17-31.

Office subsequently requested clarification from Dr. Zeidman, who provided a February 4, 2003 report.

In a March 11, 2003 decision, the Office reissued the November 15, 2001 schedule award for 15 percent impairment to the right leg. However, the decision was set aside by an Office hearing representative on October 28, 2003. The hearing representative determined that Dr. Zeidman's reports were inadequate to resolve the conflict in medical opinion. On January 13, 2004 the Office referred appellant to Dr. George P. Glenn, Jr., a Board-certified orthopedic surgeon, to resolve the medical conflict.

In a January 29, 2004 report, Dr. Glenn noted that appellant reached maximum medical improvement on July 18, 2000. On examination, there was no evidence of instability to either knee, negative anterior and posterior drawer signs, no crepitus and full flexion and extension of the left and right knee with complaint of pain. Dr. Glenn further advised that muscle tone and strength were normal with no evidence of atrophy, peripheral pulses were symmetrical and sensory pattern was normal. Appellant demonstrated a slight right sided limp but did not use any assistive devices and did not qualify for impairment for gait derangement under Table 17-5, page 529 of the A.M.A., *Guides*. Dr. Glenn noted some alteration in range of motion of the right knee; however, the measurement for range of motion was greater than 110 degrees and therefore there was no impairment under Table 17-10, page 537 of the A.M.A., *Guides*. He noted Dr. Krasnick's operative note showed mild patellofemoral arthritis that was best determined by x-ray with the knee in full extension; however, appellant could not voluntarily extend the knee which precluded this means of measurement.[8] Dr. Glenn noted that, a footnote to Table 17-31, page 544 of the A.M.A., *Guides* described complaints of patellofemoral pain and crepitation on physical examination without joint space narrowing on x-ray as five percent impairment of the extremity, which he found applicable in appellant's case. He noted the diagnoses based estimates method for calculating impairment would not apply as she did not have patellar subluxation, dislocation or residual instability and there was no evidence of peripheral or vascular involvement. Dr. Glenn opined that appellant had reached maximum medical improvement with five percent permanent impairment of the right leg attributable to the July 28, 1998 injury. He also addressed her disability status.

In a February 20, 2004 report, the Office medical adviser concurred in Dr. Glenn's determination that appellant had five percent impairment of the right leg under Table 17-31 of the A.M.A. *Guides*.

In a March 3, 2004 decision, the Office denied appellant's request for an additional schedule award, finding that Dr. Glenn's opinion constituted the weight of the medical evidence.

On March 10, 2004 appellant requested an oral hearing which was held on November 13, 2006.

In a January 19, 2007 decision, the hearing representative affirmed the March 3, 2004 schedule award.

[8] *Id.*

On June 12, 2007 appellant filed an appeal with the Board. On June 18, 2008 the Board remanded the case for reconstruction and proper assemblage of the case record. The Office was directed to issue an appropriate merit decision issued on appellant's claim to preserve her appeal rights.[9]

In a decision dated December 30, 2008, the Office reissued the January 19, 2007 decision denying appellant's claim for an additional schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[10] and its implementing regulations[11] 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

The Office accepted appellant's claim for right knee sprain and authorized arthroscopic surgery, which was performed on April 10, 2000. It found that a conflict in the medical evidence arose between Dr. Diamond and an Office medical adviser concerning the extent of impairment of the right leg. Consequently, the Office referred appellant to Dr. Glenn to resolve the conflict.[12]

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[13] The Board finds that the opinion of Dr. Glenn is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant does not have impairment greater than the 15 percent schedule award previously granted.

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[9] Docket No. 07-1702 (issued June 18, 2008).

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404.

[12] As noted, appellant was initially referred to Dr. Zeidman who failed to provide responsive clarification as requested by the Office. When an impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the physician is unable to clarify or elaborate on the original report or if the physician's report is vague, speculative or lacks rationale, the Office must refer the employee to another impartial medical specialist for a rationalized medical opinion on the issue in question. *See Margaret M. Gilmore*, 47 ECAB 718 (1996); *Terrence R. Stath*, 45 ECAB 412 (1994); *Nathan L. Harrell*, 41 ECAB 402 (1990); *John I Lattany*, 37 ECAB 129 (1985).

[13] *Aubrey Belnavis*, 37 ECAB 206 (1985). *See* 5 U.S.C. § 8123(a).

Dr. Glenn reviewed appellant's history, reported findings and noted an essentially normal physical examination. He advised that she reached maximum medical improvement. Dr. Glenn noted examination of appellant's right knee revealed no evidence of instability, no crepitus, full flexion and extension with complaints of pain, muscle tone and strength were normal with no evidence of atrophy, peripheral pulses were symmetrical and sensory pattern was normal. He noted that she demonstrated a slight right sided limp but did not use any assistive devices and therefore did not qualify for impairment for gait derangement under Table 17-5, page 529 of the A.M.A., *Guides*. Dr. Glenn indicated range of motion of the right knee was greater than 110 degrees and therefore appellant did not qualify for impairment pursuant to Table 17-10, page 537 of the A.M.A., *Guides*. He advised that the diagnosis-based estimates method would not apply as she did not have patellar subluxation, dislocation or residual instability and there was no evidence of peripheral or vascular involvement. Dr. Glenn noted Dr. Krasnick's operative note showed mild patellofemoral arthritis which was best determined by x-ray with the knee in full extension; however, appellant could not voluntarily extend the knee which precluded this means of measurement. He noted that the footnote to the Table 17-31 provided five percent impairment for complaint of patellofemoral pain and crepitation on physical examination without joint space narrowing on x-ray. Dr. Glenn found that this was appropriate in appellant's case. He opined that pursuant to the A.M.A., *Guides* she had five percent permanent impairment of the right leg.

Dr. Glenn properly applied the A.M.A., *Guides* and determined that appellant had five percent of the right lower extremity. This evaluation conforms to the A.M.A., *Guides*. On February 20, 2004 an Office medical adviser reviewed Dr. Glenn's findings pursuant to the A.M.A., *Guides* and noted that the impartial specialist has properly applied Table 17-31.

On appeal, appellant asserts that Dr. Diamond properly applied the A.M.A., *Guides* and found 31 percent impairment of the right leg. However, it must be noted that the impairment rating of Dr. Diamond does not conform to Chapter 17, specifically the cross-usage chart at Table 17-2, page 526. In rating impairment of 31 percent, Dr. Diamond noted strength deficit under Table 17-8, laxity of the ligament laxity under Table 17-33, which addresses diagnosis-based impairment estimates and arthritis under Table 17-31. Table 17-2 precludes combining arthritis and diagnosis-based impairment estimates with loss of strength deficit. The failure of Dr. Diamond to address the cross-usage chart reduces the probative value of his rating.

Appellant contends that Dr. Glenn did not provide adequate findings or rationale on examination. Dr. Glenn noted that range of motion of the right knee with regard to extension and flexion was greater than 110 degrees and normal such that there was no impairment under Table 17-10, page 537 of the A.M.A., *Guides*. He noted that the operative note showed mild patellofemoral arthritis which was best determined by x-ray. However, Dr. Glenn explained that this means of measurement could not be performed as appellant could not voluntarily extend the knee to allow the appropriate x-ray to be obtained. He addressed motor strength of the right knee, finding that muscle tone and strength were normal with no evidence of atrophy. Dr. Glenn provided sufficient reasoning for his impairment rating.

CONCLUSION

The Board finds that appellant has established that she has no more than 15 percent impairment of the right leg for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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