

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

L.A., Appellant)

and)

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**)

**Docket No. 09-411
Issued: June 15, 2010**

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 November 26, 2008 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated July 24 and October 10, 2008. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has more than five percent permanent impairment to her left lower extremity; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 31-year-old mail clerk, injured her left knee on March 5, 2007 when she struck her leg under her desk. She filed a claim for benefits, which the Office accepted for

contusion of the left knee. The claim was subsequently expanded to include the conditions of patella tendinitis of the left knee and chondromalacia of the left patella.¹

In a November 9, 2007 report, Dr. Seth Gasser, Board-certified in orthopedic surgery and appellant's treating physician, noted that appellant complained of "unbearable" pain in her left knee which was aggravated by squatting, climbing stairs and prolonged sitting. He noted that she had positive mild discomfort in the medial portion of her left patellar tendon and significant pain in the medial facet of the patella. Dr. Gasser stated that appellant was at postsurgery status for anterior cruciate ligament reconstructive surgery and diagnosed left patellar tendinitis, chondromalacia patella Grade 1 on the left. In a form report dated November 9, 2008, he indicated that she had three percent whole person impairment and stated that she reached maximum medical improvement on November 9, 2007.

On January 8, 2008 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left leg.

In order to determine the degree of permanent impairment appellant may have sustained from her accepted left knee condition, the Office referred appellant for a second opinion examination with Dr. William Dinenberg, a Board-certified orthopedic surgeon. In a report dated May 15, 2008, Dr. Dinenberg stated that appellant had five percent impairment of the whole person under Table 13-15 at page 336 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th edition) (A.M.A., *Guides*).

In a report dated July 9, 2008, an Office medical adviser found that appellant had five percent impairment of her left lower extremity based on the A.M.A., *Guides*. He rejected Dr. Dinenberg's opinion of five percent whole person impairment based on appellant's history of chondromalacia and contusion. The Office medical adviser rated five percent impairment for arthritis, citing the footnote at Table 17-31, page 544 of the A.M.A., *Guides*, which states:

"In an individual with a history of direct trauma, a complaint of patellofemoral pain, and crepitation on physical examination, but without joint space narrowing on x-rays, a two percent whole person or five percent lower extremity impairment is given."

On July 24, 2008 the Office granted appellant a schedule award for five percent permanent impairment of the left lower extremity for the period May 15 to August 23, 2008, for a total of 4.4 weeks of compensation.

By letter dated September 15, 2008, appellant's attorney requested reconsideration. Appellant submitted results of diagnostic tests dated July 10 and 11, 2008 which reiterated the diagnosis of moderate chondromalacia of the left patella and noted that she had underwent surgery to repair her left anterior cruciate ligament.

¹ In a statement of accepted facts dated April 22, 2008, the Office noted that appellant sustained a network-related contusion of the left knee in May 2006 and underwent reconstructive surgery to repair her anterior cruciate ligament on September 12, 2006. It indicated that, prior to the March 5, 2007 work injury, appellant was working light duty while recovering from her reconstructive left knee surgery.

By decision dated October 10, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act² 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.³ 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* (5th edition) as the standard to be used for evaluating schedule losses.⁴ 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.⁵

ANALYSIS -- ISSUE 1

In this case, the Office medical adviser determined that appellant had five percent impairment of the left lower extremity by deriving five percent impairment from arthritis, pursuant to Table 17-31, page 544 of the A.M.A., *Guides*. He cited the footnote to Table 17-31 at page 544 which apportioned five percent lower extremity impairment to an individual with a history of direct trauma, a complaint of patellofemoral pain, and crepitation on physical examination, but without joint space narrowing on x-rays. The Board finds that the Office medical adviser properly determined that these findings applied to appellant's condition and that appellant was entitled to five percent impairment for the left lower extremity.

Appellant asserts that she has consulted physicians whose reports support a greater impairment rating of the left lower extremity. No other reports, however, have been received by the Office. Appellant has not submitted any medical evidence which establishes that she is entitled to an additional schedule award.

As there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to more than a five percent permanent impairment to her left lower extremity.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by

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

³ *Id.* at § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

⁵ *Veronica Williams*, 56 ECAB 367, 370 (2005).

advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.⁶ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁷

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence she submitted is not pertinent to the issue on appeal. The July 10 and 11, 2008 diagnostic reports contain findings of chondromalacia of the left patella and noted that she had underwent surgery to ameliorate a torn anterior cruciate ligament. These reports did not address the relevant issue of whether appellant is entitled to a schedule award for greater impairment than the five percent impairment already awarded. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁸ Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has no more than five percent permanent impairment to her left lower extremity. The Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁷ *Howard A. Williams*, 45 ECAB 853 (1994).

⁸ *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the October 10 and July 24, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 15, 2010
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