

medial meniscectomy on both knees. The Office found that she had preexisting bilateral mild chondromalacia.

On October 17, 1995 appellant received a schedule award for a six percent impairment of her left lower extremity and a five percent impairment of her right lower extremity.

On January 17, 2007 appellant underwent additional left knee surgery, including a partial medial meniscectomy, patellofemoral chondroplasty, medial femoral chondroplasty and lateral femoral-tibial chondroplasty. She filed a claim for an increased schedule award.

On December 3, 2007 Dr. Donald J. Walla, appellant's orthopedic surgeon, reviewed x-rays taken on August 21, 2007 and found a 37 percent impairment of each lower extremity due to a 1 millimeter (mm) medial compartment joint space, a 2 mm patellofemoral joint space on the merchant view and a partial medial meniscectomy. He noted that her most recent physical examination on August 21, 2007 showed her to have full range of motion of both knees.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Andrew S. Lee, a physiatrist, for a second opinion. On April 2, 2008 Dr. Lee noted that no x-ray reports were available for review; however, appellant provided a CD-ROM with standing bilateral knee x-rays dated August 21, 2007. "Using the software the medial joint spaces were able to be measured and confirmed in the radiology department. The right knee measured 3 [mm], resulting in a seven percent lower extremity impairment rating. The left measured 2 [mm], resulting in a 20 percent impairment rating." Dr. Lee combined impairment due to arthritic changes with the diagnosis-based estimate of 2 percent bilaterally for partial medial meniscectomy and concluded that appellant had a 22 percent impairment of the left lower extremity and a 9 percent impairment of the right lower extremity.

On June 13, 2008 Dr. Lee offered a supplemental report:

"Repeat bilateral weight bearing x-rays were obtained. They were obtained with a film [to] camera distance of 90 cm [centimeters] with the beam level to the joint space and parallel to the joint surface. The x-rays were reviewed on the computer screen. The software was used to measure the joint space. That is to say the mouse was used to click between the margins of the joint space. A line intersecting these two points shows up on the screen. The computer calculates the distance of this joint space. Therefore, the computer would give the same joint space measurement whether it is on a 13 inch or a 30 inch screen. The measurements were 0.3 cm on the right and 0.24 cm on the left, which is rounded to the nearest mm which would be 2 mm. Thus, the same lower extremity impairment ratings would be obtained as in the reports dated April 2, 2008."

Dr. Lee reported that he documented full range of knee motion with extension to 179 degrees on the right and 180 degrees on the left.

On July 6, 2008 the Office medical adviser found that Dr. Lee's impairment ratings were acceptable. On September 2, 2008 the Office issued a schedule award for an additional 16 percent impairment of the left lower extremity (total 22 percent) and an additional 4 percent impairment of the right lower extremity (total 9 percent).

On November 10, 2008 Dr. Walla reported that the August 12, 2008 x-rays of the left knee showed a complete loss of the medial joint space compartment to 0 mm, a 50 percent impairment of the extremity. They also showed a 2 mm narrowing at the patellofemoral space on the merchant view, a 10 percent impairment of the extremity. Appellant's partial medial meniscectomy added two percent. Dr. Walla concluded that appellant had a 62 percent impairment of the left lower extremity.

Dr. Walla reported that x-rays of the right knee showed a 1 mm joint space of the medial compartment, a 25 percent impairment of the extremity. They showed a 2 mm space of the patellofemoral joint on the merchant view, a 10 percent impairment of the extremity. Appellant's partial medial meniscectomy added two percent. Dr. Walla concluded that appellant had a 37 percent impairment of the right lower extremity.

Appellant requested reconsideration and submitted CD-ROMs of the x-rays obtained on June 12 and August 12, 2008. She argued that the x-rays obtained by Dr. Lee on June 12, 2008 were not weight bearing, as reported.

On February 16, 2009 the Office medical adviser noted a conflict. A radiologist described arthritis in the June 12, 2008 x-rays as mild, while Dr. Walla's measurements from the August 12, 2008 x-rays -- only two months later -- showed nearly end-stage joint-space narrowing. The medical adviser recommended referral to an evaluator who would measure the x-rayed joint-space intervals with a ruler and who could also use a goniometer to consider the reported varus alignment. He volunteered to review the x-rays himself, if that were permissible. If not, the medical adviser stated that both sets "must be reviewed" by a local radiologist who would make the required measurements. "Until this conflictive issue is resolved, a decision regarding possible increases in the schedule awards due to right and left knee conditions cannot be made."

In a decision dated February 20, 2009, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It explained that no modification of the previous schedule award was possible using the evidence appellant submitted with her request for reconsideration.

Appellant again requested reconsideration. She stated that she was giving the Office medical adviser permission to measure both sets of x-rays. Appellant noted that the Office already had the CD-ROMs of the x-rays. She reminded the Office that the June 2008 x-rays were not weight bearing.

On April 3, 2009 the Office medical adviser stated that the submitted CD-ROMs could not be used to fulfill the requirements for evaluating impairment due to arthritis. "This input permits no revision of the impairment ratings for either lower extremity."

In a decision dated June 29, 2009, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It found that Dr. Walla's November 10, 2008 report was duplicative of a report previously considered. The Office further found that the CD-ROMs submitted were not standard x-ray films and could not be used to evaluate impairment due to arthritis.

On appeal, appellant points out that the Office medical adviser misreported one of Dr. Walla's measurements. She again argues that the June 12, 2008 x-rays were not weight bearing:

“As stated in my reconsideration letters, one of the x-ray machines was down because of the humidity from rains in June of 2008. My x-rays were taken with the use of a portable x-ray machine and I was lying down while the x-rays were completed in Omaha on June 12, 2008.”

Appellant notes that the Office disregarded Dr. Walla's October 3, 2007 rating because he reported no range of motion, but he did, in fact, report full range of motion bilaterally. She indicates that she gave the Office medical adviser everything he needed, including her release, to compare the two sets of x-rays, only to find that the CD-ROMs could not be used. Appellant asks that her schedule award be based on Dr. Walla's rating, either his original rating of 37 percent bilaterally or his later rating of 62 percent on the left and 37 percent on the right.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ 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. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

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.³

ANALYSIS

The attending physician and the Office referral physician disagreed on the extent of appellant's permanent impairment. Dr. Walla, the attending orthopedic surgeon, reviewed x-rays obtained on August 21, 2007 and found a 37 percent impairment of each lower extremity due to loss of joint space and partial medial meniscectomies.⁴ Later, he reviewed x-rays obtained on

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ 5 U.S.C. § 8123(a).

⁴ A 1 mm joint space of the medial compartment is a 25 percent impairment of the lower extremity. A 2 mm narrowing in the patellofemoral joint is a 10 percent impairment. The A.M.A., *Guides* 544 (5th ed. 2001) (Table 17-31). A partial medial meniscectomy is a two percent impairment. *Id.* at 546 (Table 17-33).

August 12, 2008 and found a 62 percent impairment of the left knee and the same 37 percent impairment of the right.⁵

Dr. Lee, the Office referral physiatrist, disagreed. He reviewed a CD-ROM of the August 21, 2007 x-rays and found a 22 percent impairment of the left lower extremity and a 9 percent impairment of the right lower extremity. He later obtained actual x-ray films on June 12, 2008 and reported the same cartilage intervals and the same impairments.⁶

The Office medical adviser reviewed the evidence and noted the conflict. He correctly observed that no decision could be made on a possible schedule award increase until the conflict was resolved.

The Board finds that a conflict in medical opinion exists between Dr. Walla and Dr. Lee on the extent of appellant's permanent impairment. This conflict does not stem from different or incorrect applications of the A.M.A., *Guides*. Both physicians applied the same tables and applied them correctly. The conflict arises from their measurements of the x-ray cartilage intervals in appellant's knees. Pursuant to section 8123(a) of the Act, the Office shall refer appellant to an impartial medical specialist to resolve this conflict. The impartial specialist shall obtain standard x-ray films strictly adhering to the specifications on page 544 of the A.M.A., *Guides*. If possible, the radiology report should confirm those specifications. The specialist shall measure the cartilage intervals in both the knee and patellofemoral joints and shall determine appellant's bilateral lower extremity impairment using Table 17-31. The Office shall then combine the arthritis impairments with the two percent diagnosis-based estimate bilaterally for partial medial meniscectomy from Table 17-33.⁷ After such further development as may be required, the Office shall issue an appropriate final decision on appellant's claim for an increased schedule award.

It makes no difference whether, as appellant notes on appeal, the Office medical adviser misreported one of Dr. Walla's measurements. A conflict still exists between Dr. Walla and Dr. Lee on the extent of her permanent impairment. It also makes no difference if the June 12, 2008 x-rays obtained for Dr. Lee were not standing x-rays of the knee joint, as the A.M.A., *Guides* requires. Both physicians reviewed the images obtained on August 21, 2007 and reported different measurements for the cartilage interval in the knee joint.⁸ An impartial medical specialist will obtain standard x-ray films satisfying Office requirements by strictly adhering to the protocols of the A.M.A., *Guides* and will resolve the extent of appellant's permanent impairment due to the cartilage interval in both the knee (tibiofemoral) and

⁵ A 0 mm joint space of the left medial compartment is a 50 percent impairment of the lower extremity. *Id.* at 544 (Table 17-31).

⁶ A 2 mm joint space of the left medial compartment is a 20 percent impairment of the lower extremity. A 3 mm joint space on the right is a seven percent impairment. *Id.* Impairments due to partial medial meniscectomies increase the ratings to 22 and 9 percent respectively.

⁷ See *id.* at 526 (Table 17-2, allowing arthritis impairments to be combined with diagnosis-based estimates).

⁸ Dr. Lee did not rate impairment due to the cartilage interval in the patellofemoral joints, and Dr. Walla based his patellofemoral ratings on merchant views. The A.M.A., *Guides* requires a sunrise or true lateral view for the patellofemoral joint.

patellofemoral joints of her lower extremities. Section 8123(a) of the Act requires such a referral to resolve the conflict.

CONCLUSION

The Board finds that this case is not in posture for decision. There is an unresolved conflict on the extent of appellant's permanent impairment. Section 8123(a) of the Act requires further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: May 5, 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