

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

A.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Decatur, IL, Employer**

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**Docket No. 10-515
Issued: November 16, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 14, 2009 appellant filed a timely appeal from an October 13, 2009 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 this schedule award claim.

ISSUE

The issue is whether appellant has established more than 25 percent impairment of the right lower extremity, for which she received a schedule award.

FACTUAL HISTORY

On November 15, 2005 appellant, then a 64-year-old sales and service clerk, filed an occupational disease claim alleging that her duties aggravated her bilateral knee arthritis. She was first aware of this condition on September 15, 1998, but did not realize that her employment duties aggravated it until July 29, 2003. The Office accepted the claim for aggravation of

osteoarthritis to both knees. On December 13, 2006 it authorized total right knee replacement surgery, which occurred on January 3, 2007.¹

On April 3, 2008 Dr. M. Stephen Huss, a treating Board-certified orthopedic surgeon, noted appellant had total right knee arthroplasty surgery on January 7, 2007. He advised that she reached maximum medical improvement on January 11, 2008. Dr. Huss reported that x-rays revealed an excellent result for her total right knee arthroplasty.

On April 20, 2008 appellant filed a claim for a schedule award.²

In a February 5, 2009 report, Dr. Lawrence K. Li, a second opinion Board-certified orthopedic surgeon, diagnosed minimal left knee osteoarthritis and successful right knee total replacement.

On July 21, 2009 the Office received an October 6, 2008 impairment rating form and treatment notes from Dr. Keith L. Fabrique, an examining physician, who noted that appellant had a total right knee replacement, no ankylosis and mild medial lateral laxity. Range of motion findings included 110 degrees right knee flexion, normal extension of 0 degrees.

On July 24, 2009 the Office forwarded the case record to an Office medical adviser for review of appellant's accepted bilateral knee osteoarthritis condition. In a July 27, 2009 report, Dr. David H. Garelick, the Office medical adviser, concluded that appellant had 25 percent right lower extremity impairment. Using Table 16-3, p. 511 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, he determined that based on "a good result following a total knee replacement" that there was 25 percent impairment of the right lower extremity.

On December 31, 2009 the Office issued a schedule award for an additional 19 percent permanent impairment of the right lower extremity, or 54.72 weeks of compensation, payable from January 11, 2008 to January 28, 2009.³ It noted that total impairment of the right leg was 25 percent less the previous payment of 6 percent in file number xxxxxx733."

¹ On June 26, 2009 the Office found that, as appellant's actual earnings as a sales service and distribution clerk fairly and reasonably represented her wage-earning capacity, she had no loss of wage-earning capacity and reduced her compensation benefits.

² Under file number xxxxxx733, the Office accepted appellant's August 23, 2002 occupational disease claim for bilateral tarsal tunnel syndrome. On October 6, 2006 it issued a schedule award for one percent right lower extremity impairment. In an August 2, 2007 decision, appellant received an additional five percent impairment of her right leg for a total of six percent impairment.

³ Total loss of a lower extremity entitles a claimant to 288 weeks of compensation. 5 U.S.C. § 8107(c)(2). Compensation for partial loss of use is proportionate. Section 8107(c)(19). Nineteen percent of 288 weeks of compensation is 54.72 weeks of compensation. The Office began the period of the schedule award after total disability ended on January 11, 2008 and appellant was cleared to return to limited duty.

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.⁶ Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁷

It is well established that preexisting impairments to the scheduled member are to be included when determining entitlement to a schedule award.⁸ Office procedures state that any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.⁹

ANALYSIS

The Office accepted the condition of aggravation of bilateral knee osteoarthritis in the current claim and bilateral tarsal tunnel syndrome in file number xxxxxx733. In its October 13, 2009 decision, the Office granted an additional schedule award of 19 percent for her right lower extremity. In reaching this determination, the Office informed appellant that her total right lower extremity impairment was 25 percent, less the 6 percent paid under file number xxxxxx733.

Dr. Garelick, the Office medical adviser, reviewed the medical reports of record and determined that appellant had a right knee replacement with a good result that represented a 25 percent impairment of her right leg.¹⁰ He properly applied Table 16-3 on page 511 of the A.M.A., *Guides* which allows for an impairment rating up to 25 percent in situations where a person has a good result following knee replacement surgery. The statement of accepted facts

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

⁸ *Michael C. Milner*, 53 ECAB 446, 450 (2002); *Raymond E. Gwynn*, 35 ECAB 247 (1983).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(a)(2) (January 2010).

¹⁰ A.M.A., *Guides* 511 (6th ed. 2009) (Table 16-3).

provided that Dr. Garelick contained no information regarding file number xxxxxx733 including the prior schedule award for a six percent right leg permanent impairment.

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.¹¹ The Board notes that the Office did not include a clear listing of each of the accepted conditions and schedule awards received. Office procedures indicate that accepted conditions must be included in a statement of accepted facts and further provides that, when an Office medical adviser renders a medical opinion based on a statement of accepted facts which is incomplete or inaccurate or does not use the statement of accepted facts as the framework in forming his or her opinion, the probative value of the opinion is diminished.¹² In this case, the Office medical adviser did not have a complete statement of accepted facts for review. Since the Office medical adviser rendered his medical opinion based on an incomplete factual statement omitting appellant's previous schedule award issued under file number xxxxxx733, the probative value of his report is reduced. The case will be remanded for further medical development and clarification as to the factual aspects of appellant's previous claim under file number xxxxxx733.

On remand, the Office should combine the files for appellant's right lower extremity conditions and specifically note the previous schedule award received under file number xxxxxx733.¹³ It should submit the medical record and an updated statement of accepted facts to its Office medical adviser for a supplemental report as to the extent of permanent impairment. After such development as the Office deems necessary, an appropriate merit decision shall be issued.

CONCLUSION

The Board finds the case is not in posture for decision as to the extent of appellant's right lower extremity impairment.

¹¹ See *J.Q.*, 59 ECAB 366 (2008); *Thomas J. Fragale*, 55 ECAB 619 (2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (January 2010).

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8 (February 2000) regarding the Office procedures for doubling case files.

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2009 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with the above opinion.

Issued: November 16, 2010
Washington, DC

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

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

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