

FACTUAL HISTORY

Appellant, an 81-year-old postal employee, was injured on September 7, 1999. The Office accepted her claim for right knee and facial contusion.¹

On March 12, 2002 Dr. David Weiss, an orthopedist, reviewed appellant's medical history, presented findings on examination and diagnosed post-traumatic internal derangement to the right knee and right knee degenerative joint disease. He noted that she had reached maximum medical improvement. Dr. Weiss noted that physical examination of appellant's right knee revealed crepitation within the lateral joint compartment and, to a lesser extent, over the medial joint compartment. Patellofemoral compression produced marked crepitation and pain. Valgus stress testing produced pain into the medial joint line and range of motion was restricted. Dr. Weiss opined that appellant attained maximum medical improvement on March 12, 2002 and, citing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), recommended an eight percent impairment of her right lower extremity, computed as the sum of a five percent impairment for right patellofemoral pain and crepitation pursuant to Table 17-31,² as well as a three percent right knee impairment for pain, pursuant to Figure 18-1.³ He opined that the work-related injuries she sustained on July 17, 1984 and September 7, 1999, as well as her employment duties, were competent producing factors for appellant's subjective and objective findings.

On June 27, 2008 the Office referred appellant's file and a statement of accepted facts for review by the district medical adviser. In a July 7, 2008 report, the district medical adviser, citing the A.M.A., *Guides*,⁴ explained that appellant's condition did not meet the criteria for an additional Chapter 18 pain award. The district medical adviser recommended a five percent impairment rating for appellant's right lower extremity, pursuant to Table 17-31 of the A.M.A., *Guides*.

By decision dated April 7, 2009, the Office granted appellant a schedule award for five percent impairment of her right lower extremity.

On April 15, 2009 appellant, through her attorney, requested an oral hearing, which the Office conducted on August 28, 2009. Her attorney was present and disputed the district medical adviser's report, particularly its rejection of Dr. Weiss' pain-related impairment rating.

¹ Appellant has additional workers' compensation claims. Claim number xxxxxx593 concerned a left knee injury which the Office accepted and for which appellant received a schedule award for a 20 percent impairment of her left lower extremity. Claim number xxxxxx719 concerned left knee strain sustained on July 17, 1984 and was accepted for left knee contusion. The Office did not accept appellant's claim for a low back condition. Claim number xxxxxx269 was accepted for right carpal tunnel syndrome. By decision dated September 21, 2005, the Office denied appellant's schedule award request for right upper extremity impairment. This denial was affirmed by subsequent decisions on appeal.

² A.M.A., *Guides* (5th ed. 2001). Dr. Weiss cited Table 17-31 on page 544.

³ *Id.* at Figure 18-1 on page 574.

⁴ The district medical adviser cited Table 17-31 on page 544, Table 17-33 on page 545 and section 18.3a on page 570.

Appellant's attorney argued that appellant should be sent for an independent medical examination and that this physician should be instructed to calculate an impairment rating based on the 5th edition of the A.M.A., *Guides*.

By decision dated November 18, 2009, the Office hearing representative affirmed the Office's April 7, 2009 decision. The hearing representative found that the weight of the medical evidence lay with the district medical adviser's opinion.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁵ 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 A.M.A., *Guides*.⁶

The Act does not authorize the payment of schedule awards for the permanent impairment of the whole person.⁷ Payment is authorized only for the permanent impairment of specified members, organs or functions of the body.

ANALYSIS

On appeal, appellant alleges that she is entitled to a greater impairment rating. The Office accepted her claim for right knee and facial contusions. It awarded her a schedule award for five percent permanent impairment of the right lower extremity on April 7, 2009. The issue is whether appellant is entitled to an additional three percent impairment rating for right knee pain, pursuant to Chapter 18.

Dr. Weiss and the Office medical adviser agreed that appellant was entitled to a schedule award for five percent impairment of the right knee for patellofemoral crepitation and pain, pursuant to Table 17-31. Dr. Weiss did not find that she had arthritis impairment based on x-ray loss of cartilage intervals, therefore, pursuant to the footnote to Table 17-31, given her history of direct trauma, complaints of patellofemoral pain and crepitation on physical examination, but without joint space narrowing on x-ray, a maximum five percent lower extremity impairment award is given.

The Board further notes that Dr. Weiss provided a three percent impairment for right knee pain under Chapter 18 of the A.M.A., *Guides*⁸ but the Board has held that physicians should

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404. Impairment ratings calculated after February 2001 are done in accordance with the fifth edition of the A.M.A., *Guides*. For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁷ Ernest P. Govednick, 27 ECAB 77 (1975).

⁸ A.M.A., *Guides*, page 574, Figure 18-1.

not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.⁹ The A.M.A., *Guides* explain that the impairment ratings in the body organ system chapters make allowance for expected accompanying pain.¹⁰ Dr. Weiss did not explain why the pain rating under Chapter 18 would be appropriate in light of the cautionary language of the A.M.A., *Guides* and the fact that appellant was already granted the five percent impairment award for knee pain and crepitation.

Consequently, the Office medical adviser in conformance with the A.M.A., *Guides* found that appellant has five percent right lower extremity impairment and was not entitled to an additional award under Chapter 18. The medical adviser explained that appellant did not have an additional pain syndrome which necessitate an additional award under Chapter 18.

On appeal, appellant's attorney argued that an unresolved conflict of medical opinion exists requiring an independent medical examination. However, a mere disagreement between two physicians does not constitute a conflict. Rather, the disagreement must arise from equally weighted medical opinions.¹¹ Dr. Weiss, in his March 12, 2002 report, failed to adequately explain, pursuant to the A.M.A., *Guides*, how or why appellant would be entitled to an additional impairment for pain. The Office medical adviser explained, as noted above, Chapter 18 is not to be used to rate pain-related impairments for any condition that can be adequately rated in other chapters of the A.M.A., *Guides*. Consequently, because he did not properly apply the A.M.A., *Guides* in rendering his opinion, the Board finds Dr. Weiss' opinion is not of equal weight as that provided by the district medical adviser and thus does not create a conflict of medical opinion.

CONCLUSION

The Board finds that appellant has no more than a five percent permanent impairment of the right lower extremity, for which she has received a schedule award.

⁹ *Id.* at 571. See *Linda Beale*, 57 ECAB 429 (2006); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹⁰ *Id.* at 20. See *B.P.*, 60 ECAB ____ (Docket No. 08-1457, issued February 2, 2009).

¹¹ See 20 C.F.R. § 10.321(b). See also *James P. Roberts*, 31 ECAB 1010 (1980).

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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