

On October 12, 2006 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that she sustained a right knee injury caused by factors of her employment. On August 2, 2006 she underwent a right knee partial medial meniscectomy performed by Dr. Harold J. Granger, a Board-certified orthopedic surgeon. On August 8, 2008 the Office accepted appellant's claim for a right knee medial meniscus tear, right knee cruciate ligament sprains, right patella chondromalacia and right leg traumatic arthritis. On August 25, 2008 appellant filed a claim for a schedule award.

On November 16, 2006 Dr. Granger noted that appellant was doing well following her medial meniscal tear surgery and had only a mild amount of pain in her proximal lateral portal. She was able to perform almost any activity with minimal discomfort. Findings on physical examination included no right knee effusion, range of motion from 0 to 120 degrees and negative Lachman's and anterior drawer signs. Varus/valgus stress showed no laxity. There was no pretibial edema. Dorsalis pedis pulse was 2+.

In a January 28, 2008 report, Dr. John W. Ellis, a Board-certified family practitioner, reviewed the medical history and provided findings on physical examination. The posterior cruciate ligament was normal. There was some laxity of the anterior cruciate ligament (ACL). The medial collateral ligament (MCL) was lax because of the surgical partial removal of the patella. There was some chondromalacia on movement of the patella due to her job and an aggravation of the meniscal injury. Dr. Ellis calculated 16 percent right lower extremity impairment, including 7 percent for mild MCL laxity, 7 percent for mild ACL laxity and 2 percent for a partial medial meniscectomy, according to Table 17-33 at page 546 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*).

On November 20, 2008 Dr. Ronald Blum, an Office medical adviser, reviewed the reports of Dr. Ellis and Dr. Granger. He noted that Dr. Ellis found decreased right knee range of motion and laxity of the ACL and MCL. Dr. Granger found full range of motion (0 to 120 degrees), negative Lachman and anterior drawer signs (ACL tests) and no laxity on varus (lateral collateral ligament) or valgus (MCL) stress tests. Dr. Blum recommended an evaluation by an appropriate Board-certified specialist.

In a February 17, 2009 report, Dr. Christopher Cenac, a Board-certified orthopedic surgeon and an Office referral physician, reviewed the medical evidence and provided findings on physical examination. Appellant had full right knee range of motion. Measurement of the lower extremities revealed 18 centimeters bilaterally. Appellant walked without a limp and no assistive devices were used. She could heel and toe walk without difficulty. No point tenderness was noted. There was no evidence of cruciate ligament laxity. Minimal to mild MCL laxity was noted. There was no swelling or deformity of the knee. Quadriceps muscle strength was 5/5. X-rays revealed minimal loss of joint space height in the medial compartment. Dr. Cenac calculated nine percent right lower extremity impairment based on the A.M.A., *Guides* fifth edition, including seven percent for mild MCL laxity and two percent for a partial medial meniscectomy, according to Table 17-33 at page 546 of the A.M.A., *Guides*.

On March 6, 2009 Dr. R. Meador, an Office medical adviser, calculated that appellant had nine percent right lower extremity impairment based on Dr. Cenac's report and the fifth

edition of the A.M.A., *Guides*. This included two percent impairment for a partial meniscectomy and seven percent for mild collateral ligament laxity according to Table 17-33 at page 546.²

By decision dated March 17, 2009, the Office granted appellant a schedule award, based on nine percent right lower extremity impairment, for 25.92 weeks, from February 15 to August 15, 2007.³

Appellant requested a hearing that was held on September 28, 2009. No additional evidence was submitted.

By decision dated December 1, 2009, an Office hearing representative affirmed the March 17, 2009 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of the 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

ANALYSIS

The Board finds that this case is not in posture for a decision.

Dr. Ellis reviewed the medical history and provided findings on physical examination at the request of appellant's representative. He calculated 16 percent right lower extremity impairment, including 7 percent for mild ACL laxity, 7 percent for mild MCL laxity and 2 percent for a partial medial meniscectomy. The ratings were all made according to Table 17-33 at page 546 of the fifth edition of the A.M.A., *Guides*. Table 17-33 provides a 7 percent rating

² See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

³ The Federal Employees' Compensation Act provides for 288 weeks of compensation for 100 percent loss or loss of use of the lower extremity. 5 U.S.C. § 8107(c)(2). Multiplying 288 weeks by nine percent equals 25.92 weeks of compensation.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404.

for cruciate or collateral ligament laxity. Dr. Cenac, an Office second opinion physician, reviewed the medical evidence and provided findings on physical examination. He calculated nine percent right lower extremity impairment based on the A.M.A., *Guides* fifth edition, including seven percent for mild MCL laxity and two percent for a partial medial meniscectomy, according to Table 17-33 at page 546 of the A.M.A., *Guides*. Dr. Cenac did not find that appellant had a permanent impairment due to ACL laxity, as had Dr. Ellis. Section 8123(a) of the Act provides that, “if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination.”⁷

The Board finds that this case is not in posture for a decision. There is a conflict in the medical opinion evidence between Dr. Ellis and Dr. Cenac as to appellant’s right lower extremity impairment. Dr. Ellis found impairment pursuant to Table 17-33 due to ACL laxity but Dr. Cenac did not. On remand of the case, the Office should refer appellant to an appropriate Board-certified specialist, for an examination and evaluation to resolve the conflict in the medical opinion evidence.

CONCLUSION

The Board finds that this case is not in posture for a decision. On remand, the Office should refer appellant to an appropriate Board-certified specialist to resolve the conflict in the medical opinion evidence as to appellant’s right lower extremity impairment. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁷ 5 U.S.C. § 8123(a); see also *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 1, 2009 is set aside and the case is remanded for further action consistent with this decision.

Issued: October 15, 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