

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

J.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 10-626
Issued: October 7, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 January 6, 2010 appellant, through her representative, filed a timely appeal from the November 10, 2009 merit decision of the Office of Workers' Compensation Programs, which denied her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant is entitled to a schedule award as a result of her accepted employment injuries.

FACTUAL HISTORY

On December 4, 2004 appellant, then a 47-year-old mail handler, sustained an injury in the performance of duty when the forklift she was driving stopped abruptly. The Office accepted her claim for bilateral knee strain and left elbow strain.

On April 1, 2009 appellant filed a claim for a schedule award. She submitted a February 1, 2007 report from Dr. Sheldon Kaffen, an orthopedic surgeon and Office second

opinion physician, who examined appellant and diagnosed bilateral knee strain and left elbow strain, “both resolved.” It was Dr. Kaffen’s opinion, based on the history, the physical examination and his review of the medical documentation, that there were no objective findings to establish that appellant had any residuals of the accepted medical conditions. “Examination of the left elbow and both knees are entirely within normal limits.”

The Office informed appellant of the evidence her doctor needed to provide to establish permanent impairment for a schedule award. It asked for an assessment of permanent impairment according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008), including:

“1. Whether maximum medical improvement has occurred and, if so, the approximate date; 2. Description of any restriction of movement in terms of degrees of retained active motion; 3. Description of all other pertinent objective findings -- decrease of strength, atrophy, ankylosis, sensory changes, or other, as applicable; 4. Description of subjective complaints causing impairment -- pain, discomfort; etc. and 5. Recommend percentage of impairment of the affected member(s). Show how you arrived at the figure using the applicable tables in the [A.M.A.,] *Guides*.”

In a May 21, 2009 decision, the Office denied appellant’s claim for a schedule award. It found that she failed to submit medical evidence to establish a measurable impairment due to the accepted bilateral knee and left elbow strains.

By decision dated November 10, 2009, an Office hearing representative affirmed. The hearing representative noted that appellant’s representative requested 30 days to submit a medical evaluation but that no medical evidence identifying permanent impairment was received.

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 A.M.A., *Guides*.²

A claimant seeking schedule award compensation under the Act has the burden of establishing the claim by the weight of the reliable, probative and substantial evidence.³ The

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404. 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 2.0808.6.a (January 2010).

³ See *D.H.*, 58 ECAB 358 (2007); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

degree of any functional impairment is a medical question that can be established by medical evidence from a physician.⁴

ANALYSIS

The Office accepted that appellant sustained bilateral knee and left elbow strains on December 4, 2004. Having filed a claim for a schedule award, appellant has the burden to establish that the accepted strains have caused a permanent physical impairment to her lower or upper limbs.

The Office well advised appellant of the medical evidence needed, but she failed to submit any evaluation of permanent impairment to support her claim for a schedule award. Appellant submitted a February 1, 2007 report from Dr. Kaffen, an orthopedic surgeon, but his findings indicated that she has no permanent impairment as a result of the accepted strains. Dr. Kaffen's examination of both knees and the left elbow were entirely within normal limits. He concluded that the bilateral knee and left elbow strains had resolved.

Without a medical evaluation of permanent impairment under the sixth edition of the A.M.A. *Guides*, appellant has failed to establish a *prima facie* claim for a schedule award. The Board will therefore affirm the Office hearing representative's November 10, 2009 decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she is entitled to a schedule award as a result of her accepted employment injuries.

⁴ See R.S., 58 ECAB 362 (2007).

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 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