United States Department of Labor
Employees' Compensation Appeals Board

P.B., Appellant	)	
and	)	**Docket No. 10-2153**
	)	**Issued: August 11, 2011**
DEPARTMENT OF THE NAVY, MWR GYMNASIUM, Lakehurst, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 25, 2010 appellant, through counsel, filed a timely appeal of the June 1, 2010 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

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

On appeal, counsel asserts that appellant has more than eight percent impairment of the left lower extremity under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). He further asserted a property right in a schedule award benefit under the fifth edition of A.M.A., *Guides*, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathews v. Eldridge*, 424 U.S. 319 (1976).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The Office accepted that on July 4, 2000 appellant, then a 25-year-old recreation assistant, sustained a left knee sprain while squatting down to pick up a weight. It authorized arthroscopy, retinacular release and medial reinacular realignment of the left knee which were performed on January 9, 2001.

On December 24, 2007 appellant filed a claim for a schedule award. In an August 23, 2007 report, Dr. Nicholas P. Diamond, an attending Board-certified orthopedic surgeon, found that she had 21 percent impairment of the left lower extremity based on Table 17-10, Table 13-23 and Table 15-18 at pages 537, 346 and 424, respectively, of the fifth edition of the A.M.A., *Guides.* He attributed appellant's impairment to diminished range of motion of the left knee and sensory deficit at the left L3, L4, L5 and S1 nerve roots. Dr. Diamond concluded that she reached maximum medical improvement on the date of his examination.

On March 12, 2008 Dr. Andrew A. Merola, an Office medical adviser, reviewed the medical evidence. He noted utilized deficits to the lumbar nerve roots at L3 through S1 as a cause of disability. Dr. Merola stated that these deficits had not been accepted by the Office, as the only accepted condition was a left knee sprain. Utilizing Table 17-10 at page 537 of the fifth edition of the A.M.A., *Guides*, he determined that appellant had 10 percent impairment of the left lower extremity based on Dr. Diamond's loss of range of motion finding. Dr. Merola concluded that she reached maximum medical improvement on August 23, 2007.

By letter dated June 6, 2008, the Office requested that Dr. Diamond review Dr. Merola's March 2, 2008 report and respond.

In a November 7, 2008 report, Dr. Diamond stated that, at the time of his August 23, 2007 evaluation, appellant complained about color and hair growth changes, swelling and changes in temperature of extreme cold to hot in her lower extremities. On physical examination, he found sensory deficit in her left lower extremity which corresponded to the nerve roots from L3 to S1. Dr. Diamond concluded that appellant had complex regional pain syndrome (CRPS) as a result of the July 4, 2000 employment injury.

On December 3, 2008 Dr. Henry J. Magliato, a Board-certified orthopedic surgeon and an Office medical adviser, reviewed Dr. Diamond's November 7, 2008 report. He advised that appellant appeared to have CRPS but, there was not enough clinical information to grant a schedule award under the fifth edition of the A.M.A. *Guides*. According to page 553, the only way to evaluate CRPS in the lower extremities was to use the station and gait impairment criteria described in Table 13-15 under the central nervous system chapter at page 336, section 13.5a. However, Dr. Magliato could not use this table because Dr. Diamond did not provide any gait or station information in his report.

By letter dated January 13, 2009, the Office requested that Dr. Diamond review Dr. Magliato's December 3, 2008 report and provide additional clinical information.

In a February 12, 2009 report, Dr. Diamond advised that according to page 496 of the fifth edition of the A.M.A., *Guides*, CRPS can be rated from sensory deficits and pain according

to the grade that best described the severity of interference with activities of daily living as described in Table 16-10a at page 482. He stated that the nerve value multiplier was not used. The impairment rating was then combined with the loss of joint motion and/or motor deficits. Dr. Diamond stated that he used this method to determine that appellant had a 21 percent left lower extremity impairment.

On February 24, 2009 the Office accepted appellant's claim for CRPS.

On February 25, 2009 Dr. Magliato reviewed Dr. Diamond's February 12, 2009 findings. He advised that page 496 of the A.M.A., *Guides* only addressed to the upper extremities and not the lower extremities. Dr. Magliato discussed the difficulty in calculating impairment to an extremity due to CRPS. He explained that the A.M.A., *Guides* used whole person impairments and not strictly extremity impairments as CRPS was a generalized disorder.

In a June 30, 2009 letter, the Office advised Dr. Diamond that, effective May 1, 2009, all permanent impairment determinations were to be completed in accordance with the sixth edition of the A.M.A., *Guides*.[2] It asked that he submit a medical report in accordance with this edition.

In a September 18, 2009 report, Dr. Diamond noted that appellant ambulated with an antalgic gait. She exhibited a left lower extremity limp. On examination of the left knee, Dr. Diamond reported essentially normal findings with joint effusion, peripatellar tenderness and tenderness over the medial joint space and medial joint line, painful range of motion from 0 to 150/140 degrees, difficulty with kneeling and squatting, diminished muscle strength on the left gastrocnemius musculature and quadriceps. He reported normal findings on neurological examination of the lower extremities. On sensory examination, Dr. Diamond reported essentially normal findings with decreased sensation to light touch of the left lower extremity. He diagnosed traumatic articular lesion, medial femoral condyle, extensive synovitis, symptomatic anterior medial plica and excessive lateral patellar compression syndrome with patellar mal-tracking of the left knee. Dr. Diamond found that appellant was post-traumatic chronic regional pain syndrome secondary to the diagnosed left knee conditions. Appellant was status post left knee arthroscopic surgeries and lumbar facet arthropathy and pain management. Dr. Diamond advised that the July 4, 2000 employment injury was the competent producing factor for her subjective and objective findings.

Under Table 16-3 (Knee Regional Grid) at page 511 of the sixth edition of the A.M.A., *Guides*, Dr. Diamond found that appellant fell under class 1 (primary joint arthritis). This yielded a default value of seven percent (A.M.A., *Guides* 511, Table 16-3). Dr. Diamond found that appellant had a grade 2 modifier for functional history (A.M.A., *Guides* 516, Table 16-6). She had a grade 2 modifier for physical examination due to observed and palpatory findings (A.M.A., *Guides* 517, Table 16-7). Appellant had a grade 0 modifier for clinical studies. Dr. Diamond advised that the grade modifiers represented a net adjustment of one. He noted that the net adjustment formula was (GMFH - CDX) + (GMPE - CDX) + (GMS - CDX) and found an eight percent impairment of the left lower extremity. Dr. Diamond reiterated that appellant reached maximum medical improvement on August 23, 2007.

[2] A.M.A., *Guides* (6th ed. 2009).

On December 28, 2009 Dr. Magliato reviewed Dr. Diamond's September 18, 2009 findings. He utilized the diagnosis of left knee arthritis to find a default impairment value of seven percent. Dr. Magliato found that appellant had a grade 1 modifier for Functional History (GMFH), a grade 1 modifier for Physical Examination (GMPE) and grade 0 modifier for Clinical Studies (GMCS). He applied the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (2-1) + (2-1) + (0-1) + 2, which moved the default value of seven one space to the right for a total left lower extremity impairment of eight percent.

In a January 14, 2010 decision, the Office granted appellant a schedule award for eight percent impairment of the left leg.

By letter dated January 20, 2010, appellant, through counsel, requested a review of the written record.

In a June 1, 2010 decision, an Office hearing representative affirmed the January 14, 2010 decision, finding that appellant had no more than eight percent impairment of the left lower extremity based on the reports of Dr. Diamond and Dr. Magliato.

LEGAL PRECEDENT

The schedule award provision of the Act[3] and its implementing regulations[4] set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[5] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[6]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[7] Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[8] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9]

[3] *Supra* note 1; *see* 5 U.S.C. § 8107(c).

[4] 20 C.F.R. § 10.404.

[5] 5 U.S.C. § 8107(c)(19).

[6] *Supra* note 4.

[7] *Supra* note 2 at 3, section 1.3, The ICF: A Contemporary Model of Disablement.

[8] *Id.* at 494-531.

[9] *Id.* at 521.

ANALYSIS

The Office accepted that appellant sustained a left knee sprain and CRPS while in the performance of duty on July 4, 2000. Appellant underwent arthroscopic surgery on her left knee. By decision dated January 14, 2010, the Office granted her a schedule award for eight percent impairment of the left lower extremity. In a June 1, 2010 decision, it found that appellant was not entitled to any additional schedule award.

The Board finds that the Office properly based appellant's schedule award on the September 18, 2009 impairment calculations of Dr. Diamond, an attending physician, under the sixth edition of the A.M.A., *Guides*. The Office's determination in this regard is further supported by the December 28, 2009 opinion of Dr. Magliato, an Office medical adviser, who agreed with Dr. Diamond's impairment assessment made under the sixth edition of the A.M.A., *Guides*.

Dr. Diamond explained that, under Table 16-3 (Knee Regional Grid) appellant fell under class 1 within the arthritis category due to her primary joint arthritis in the left knee and that she therefore had a default value of seven percent (A.M.A., *Guides* 511, Table 16-3). He discussed the relevant grade modifiers, noting that appellant had a functional history score of two, a physical examination score of two and a clinical studies score of zero (A.M.A., *Guides* 516, 517, Tables 16-6, 16-7). These scores caused the default value to shift one place to the right on Table 16-3 and yielded a final eight percent impairment rating for appellant's left knee (A.M.A., *Guides* 511, Table 16-3).

For these reasons the Board finds the Office properly found that appellant had no more than eight percent permanent impairment of her left lower extremity.

Appellant asserts that she has a property right in a schedule award benefit under the fifth edition of the A.M.A., *Guides* and a protected property interest cannot be deprived without due process, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathews v. Eldridge*, 424 U.S. 319 (1976). These cases held only that a claimant who was in receipt of benefits (in *Goldberg* public assistance and in *Mathews* Social Security benefits) could not be terminated without due process. Appellant had received no schedule award under fifth edition.

In *Harry D. Butler*,[10] the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.[11] On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of the Office reflect use of the sixth edition of the A.M.A., *Guides*.[12] The applicable date of the sixth edition

[10] 43 ECAB 859 (1992).

[11] *Id*. at 866.

[12] FECA Bulletin No. 09-03 (issued March 15, 2009). FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).

is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than eight percent impairment of the left lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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