United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 10-413**
	)	**Issued: January 19, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Yeadon, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 2, 2009 appellant filed a timely appeal from a September 16, 2009 decision of the Office of Workers' Compensation Programs terminating her compensation benefits for her accepted work injury and a September 25, 2009 decision denying an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits for her accepted injury effective September 16, 2009; and (2) whether appellant has more than a five percent impairment of the right leg for which she received a schedule award.

FACTUAL HISTORY

On March 16, 2004 appellant, then a 38-year-old letter carrier, was injured when she was struck from behind by a car that pinned her against her work truck. The Office accepted the

claim for herniated lumbar disc and contusions of both knees. Appellant stopped work on March 16, 2004 and returned to full-time limited-duty work on September 28, 2004.

Appellant was treated for bilateral knee contusions. She came under the treatment of Dr. George L. Rodriguez, a Board-certified physiatrist, for knee and back injuries sustained at work. Dr. Rodriguez diagnosed herniated lumbar disc, lumbar radiculopathy, sciatic nerve crush injury, contusion of both knees, internal derangement of the knees and gait abnormality and recommended physical therapy. On September 28, 2004 he returned appellant to work full-time, light-duty work. An April 27, 2005 right knee magnetic resonance imaging (MRI) scan revealed chondromalacia of the patella but was otherwise normal. An MRI scan of the lumbar spine of the same date revealed minimal meningeal cysts at S2 and several minimal nabothian cysts.

On April 28, 2006 appellant filed a claim for a schedule award.

On August 8, 2006 the Office referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion as to whether appellant had permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[1] due to her work injuries. In an August 25, 2006 report, Dr. Hanley diagnosed bilateral knee contusions with retropatellar crepitus and noted that appellant reached maximum medical improvement. He advised that an MRI scan of the back did not reveal any significant disc herniation or protrusion. Examination showed limited range of motion of the low back and retropatellar crepitus in both knees with full range of motion bilaterally. Dr. Hanley noted that appellant sustained direct trauma to her right knee and had patellofemoral pain and crepitus on examination without joint space narrowing on x-ray. He rated five percent impairment of the right leg pursuant to the A.M.A., *Guides*.[2]

The Office referred Dr. Hanley's report and the case record to an Office medical adviser. On October 20, 2006 the Office medical adviser concurred with Dr. Hanley's determination that appellant had five percent impairment of the right leg.

In a December 5, 2006 decision, the Office granted appellant a schedule award for five percent permanent impairment of the right leg. The period of the award was from September 2, 2006 to March 22, 2007.[3]

Appellant came under the treatment of Dr. Daisy Rodriguez, a Board-certified physiatrist and associate of Dr. George Rodriguez, for mid and low back pain and bilateral knee pain causally related to her March 16, 2004 work injury. Dr. Daisy Rodriguez diagnosed lumbosacral radiculopathy, sciatic nerve crush injuries, contusions of the knees, chondromalacia patella, lumbosacral sprain, bulging thoracic discs, meniscal tear and chronic pain. Appellant could work full time with restrictions pursuant to a functional capacity evaluation. An electromyogram

[1] A.M.A., *Guides* (5th ed. 2001).

[2] *Id.* at 544, Figure 17-31.

[3] On January 28, 2007 appellant requested an oral hearing which the Office denied as untimely on March 7, 2007. She filed a CA-7, claim for compensation for the period July 19 to August 15, 2008 which was denied by the Office on October 31, 2008.

(EMG) dated August 15, 2008 revealed lumbosacral radiculopathy, severe at L4, L5, S1 and moderate lumbar radiculopathy at L4.

On September 9, 2008 the Office referred appellant to Dr. Hanley for an opinion as to the extent of appellant's work-related condition.

On October 3, 2008 appellant filed a claim for an additional schedule award.

In an October 3, 2008 report, Dr. Hanley reviewed the history of injury and medical treatment. He diagnosed chronic lumbar mechanical back pain and bilateral symptomatic patellofemoral dysfunction. Dr. Hanley advised that there was no significant change in findings since his August 25, 2006 examination. He noted retropatellar crepitus in both knees with no swelling, full range of motion of the knees, moderate limitation of low back motion due to pain with no neurologic findings and intact reflexes with no evidence of neurologic compromise. Dr. Hanley reiterated that appellant had no more than five percent impairment of the right leg due to the March 16, 2004 work injury. He advised that appellant had permanent residuals but remained at maximum medical improvement. Appellant could continue to work full time with permanent restrictions pursuant to the functional capacity evaluation. She did not require physical therapy or other treatment modalities but recommended pain management to monitor the use of narcotic medicine.

On October 10, 2008 the Office requested that Dr. George Rodriguez review Dr. Hanley's report and address appellant's work capacity. It also requested that Dr. Rodriguez further address appellant's permanent impairment under the A.M.A., *Guides.*

In an October 7, 2008 report, Dr. Daisy Rodriguez noted appellant's continued complaints of mid- and low-back pain and cracking sensation of both knees. She diagnosed lumbosacral radiculopathy, sciatic nerve crush injuries, contusions of the knees, chondromalacia patella, lumbosacral sprain, bulging thoracic discs, meniscal tear and chronic pain. Appellant could continue to work full time with restrictions pursuant to the functional capacity evaluation. Dr. Rodriguez advised that appellant required treatment modalities including a hinged knee brace, straight cane, analgesic gel, corset back brace, electric heating pad, body pillow, massage bed pad, lumbar car seat cushion and a whirlpool unit.

The Office found a conflict of medical opinion. Appellant's treating physicians indicated that appellant had residuals of her work-related injuries and required a hinged knee brace, straight cane, analgesic gel, corset back brace, electric heating pad, body pillow, massage bed pad, lumbar car seat cushion and a whirlpool unit and could work subject to restrictions. Dr. Hanley, an Office referral physician, determined that appellant reached maximum medical improvement and would not require physical therapy or other treatment modalities and could work subject to restrictions.

On November 14, 2008 the Office referred appellant to Dr. John T. Williams, a Board-certified orthopedic surgeon. In a December 2, 2008 report, Dr. Williams reviewed the medical records and statement of accepted facts. He reviewed appellant's job requirements, noted a history of appellant's work injury and her treatment following the injury. Lumbar MRI scans from 2004 and 2005 did not report any trauma-related findings. Physical examination revealed obesity, normal motor testing, normal sensation and no evidence of paraspinal muscle spasms.

Straight leg raising on the left was to 20 degrees although Dr. Williams later passively raised both legs to 45 degrees with no complaints. Appellant stated that she could not squat in a deep knee position but, passively, she had full range of motion of the hips and Dr. Williams also passively extended and flexed both knees. Dr. Williams found no instability of the medial and lateral plains of the bilateral knees, no effusion, positive grating on the patellofemoral excursion bilaterally, negative McMurray's and Lachman's test bilaterally and negative synovial thickening. He diagnosed acute lumbosacral sprain/strain by history, resolved, acute sprain/strain of the bilateral lower extremities, resolved and crush injuries, both lower extremities by history, resolved. Dr. Williams opined that appellant had preexisting wear and tear of both knees and diagnosed degenerative chondromalacia patellae. There was no evidence of any significant lumbar disc bulge as diagnostic testing showed no evidence of diffuse disc bulging. Dr. Williams found no basis for an impairment rating for the degenerative chondromalacia patellae because this condition preexisted her work injury and was not caused by the accident. He opined that appellant was fully recovered from her work injuries sustained on March 16, 2004 and could resume her normal preinjury activities without restrictions and did not require any further treatment for her conditions.

Appellant submitted December 4, 2008 and January 8, 2009 reports from Dr. Daisy Rodriguez who noted appellant's back and knee diagnoses and advised that appellant could continue working with restrictions.

On February 19, 2009 the Office terminated appellant's compensation benefits, finding that the weight of the medical evidence was represented by Dr. Williams and established that she had no continuing disability resulting from her accepted employment injuries. It also found that appellant was not entitled to an additional schedule award for the right lower extremity.

On February 27, 2009 appellant requested an oral hearing and asserted that the Office failed to issue a pretermination notice. In February 5 to June 9, 2009 reports, Drs. George and Daisy Rodriguez noted that appellant's condition was unchanged. They diagnosed lumbar sciatica, contusions of the knees, lumbosacral radiculopathy, sciatic nerve crush injuries, chondromalacia patella, lumbosacral sprain, bulging thoracic discs, left meniscal tear and chronic pain. Drs. Rodriguez noted that appellant could continue to work full time with restrictions.

On August 17, 2009 the Office proposed to terminate compensation benefits on the grounds that Dr. Williams' report established that she had no residuals of the work-related herniated disc of the lumbosacral spine and contusion of the bilateral knees.

On September 7, 2009 appellant objected to the Office's notice of proposed termination of her benefits. An August 4, 2009 report from Dr. George Rodriguez noted no change in appellant's condition and diagnosed lumbar sciatica, contusions of the knees, lumbosacral radiculopathy, sciatic nerve crush injuries, chondromalacia patella, lumbosacral sprain, bulging thoracic discs, left meniscal tear and chronic pain. Dr. Rodriguez noted that appellant could continue to work full time with restrictions.

On September 16, 2009 the Office terminated appellant's compensation benefits effective that day, finding that the weight of the medical evidence established that her accepted conditions had resolved.

Appellant submitted a September 1, 2009 report from Dr. George Rodriguez who reiterated his prior opinion.

In a September 25, 2009 decision, an Office hearing representative affirmed the February 19, 2009 Office decision denying appellant's claim for an additional schedule award.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[4] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[6]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for herniated disc of the lumbosacral spine and contusion of the bilateral knees. It found a conflict in medical opinion between Dr. George Rodriguez, a Board-certified physiatrist, who found that appellant required treatment for residuals of her accepted conditions and could work with restrictions, and Dr. Hanley, an Office referral physician, who determined that appellant would not require physical therapy or other treatment modalities other than pain management and could continue to work subject to restrictions. The Office referred appellant to Dr. Williams to resolve the conflict.

In a December 2, 2008 report, Dr. Williams reviewed appellant's history, reported findings and noted that appellant exhibited no objective complaints or definite work-related abnormality in her condition. He diagnosed acute lumbosacral sprain/strain by history, resolved, acute sprain/strain of the bilateral lower extremities, resolved and crush injuries, both lower extremities by history, which had resolved. Dr. Williams advised that on physical examination there were no positive objective findings to correlate to appellant's complaints and noted a negative passive straight leg test, normal motor and sensory testing, negative instability of the medial and lateral plains of the knees, no effusion, positive grating on the patellofemoral excursion bilaterally and negative synovial thickening. He noted that appellant sustained a soft tissue injury which would have resolved within a few days to a couple of months and that diagnostic testing in the record did not support any significant lumbar disc bulge or herniation. Dr. Williams opined that appellant was fully recovered from her work injuries sustained on March 16, 2004 and could resume her normal preinjury activities without restrictions and without need for further treatment for her conditions. He found no basis on which to attribute any continuing residuals or disability to the accepted March 16, 2004 work injury.

[4] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[5] *Mary A. Lowe*, 52 ECAB 223 (2001).

[6] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

The Board finds that the opinion of Dr. Williams is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related herniated disc of the lumbosacral spine and contusion of the bilateral knees has ceased. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[7]

Appellant submitted reports from Drs. George and Daisy Rodriguez, who noted appellant's continued complaints of mid- and low-back pain and bilateral knee pain. Drs. Rodriguez advised that appellant's condition was unchanged and that she could continue to work full time with restrictions. Neither physician specifically explained how any continuing condition or disability was causally related to the accepted employment injuries. As Drs. Rodriguez were silent as to causation, these additional reports of the attending physicians are insufficient to overcome that of Dr. Williams or to create a new medical conflict.

The Board finds Dr. Williams had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Williams is a specialist in the appropriate field. He offered no basis to support that appellant had residuals or work-related disability from the accepted conditions. Dr. Williams' opinion as set forth in his report of December 2, 2008 is probative evidence and reliable. The Board finds that Dr. Williams' opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of compensation benefits for the accepted conditions.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of the Federal Employees' Compensation Act[8] and its implementing regulations[9] 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 Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[10] The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[11]

[7] *Solomon Polen*, 51 ECAB 341 (2000). *See* 5 U.S.C. § 8123(a).

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

[10] *Id.* at § 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 2.808.6.a (January 2010).

[11] *See id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

ANALYSIS -- ISSUE 2

On appeal, appellant contends that she has more than five percent permanent impairment of the right lower extremity. The Office accepted appellant's claim for herniated disc of the lumbosacral spine and contusion of the bilateral knees. On December 5, 2006 it granted appellant a schedule award for five percent permanent impairment of the right lower extremity. Appellant later requested an additional schedule award.

The Office obtained an additional report from Dr. Hanley dated October 3, 2008. Dr. Hanley noted examination findings and found no significant changes in his examination on August 25, 2006. He opined that appellant sustained no more than the five percent impairment of the right leg which was causally related to her March 16, 2004 work injury.

On October 10, 2010 the Office apprised appellant of Dr. Hanley's latest opinion regarding permanent impairment and advised that appellant needed to submit a medical report conforming to the A.M.A., *Guides* that substantiated additional impairment. It also requested that Dr. George Rodriguez further address appellant's permanent impairment pursuant to the A.M.A., *Guides.* Appellant submitted several reports from Drs. George and Daisy Rodriguez who noted appellant's continued complaints of low back and bilateral knee pain and provided a diagnosis. Drs. Rodriguez failed, however, to specifically address whether appellant had permanent impairment of the right leg pursuant to the A.M.A., *Guides.* Consequently, appellant did not submit any medical evidence substantiating greater permanent impairment of the right leg than that for which she previously received a schedule award.

The record also contains Dr. Williams' December 2, 2008 report[12] in which he found no instability of the medial and lateral plains of the bilateral knees, no effusion, noted positive grating on the patellofemoral excursion bilaterally and negative synovial thickening. Dr. Williams provided diagnoses and found no basis for an impairment evaluation.

The Board finds that, under the circumstances of this case, the medical evidence does not establish that appellant has more than a five percent permanent impairment of the right leg for which she previously received a schedule award. There is no evidence of record, conforming with the A.M.A., *Guides,* supporting any greater impairment.

On appeal appellant asserts that she continues to have residuals of her work related herniated disc of the lumbosacral spine and contusion of the bilateral knees and her body hurts. She further believed Dr. Williams report was inaccurate. The Board, however, has reviewed Dr. Williams' report, as noted, and finds that it is sufficiently well rationalized and based upon a

[12] The Office selected Dr. Williams to resolve a conflict on a separate issue. Although Dr. Williams is not an impartial specialist with regard to right leg impairment for schedule award purposes, his report can still be considered for its own intrinsic value. *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *see also Leanne E. Maynard*, 43 ECAB 482 (1992) (the Board found that a physician's "opinion is probative even though he was not an impartial medical examiner").

proper factual background such that it is entitled to special weight and establishes that appellant's work-related conditions have resolved.[13]

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective September 16, 2009. The Board further finds that appellant has no more than five percent permanent impairment of the right lower extremity for which she has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 25 and 16, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 19, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[13] In a decision dated April 20, 2010, the Office vacated the September 16, 2009 termination decision and directed further development. Thereafter, on September 23, 2010 the Office issued a decision terminating appellant's compensation. However, the Board notes that appellant appealed the matter to the Board on December 2, 2009 and the Board obtained jurisdiction over the termination issue on that date. Therefore, the Board notes that the April 20 and September 23, 2010 decisions are null and void as the Office and the Board may not have concurrent jurisdiction over the same issue in a case. *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).