

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

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**S.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Meridian, ID, Employer**

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**Docket No. 10-1302  
Issued: March 9, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 8, 2010 appellant filed a timely appeal of an October 14, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has more than five percent impairment of her right lower extremity and seven percent impairment of her left lower extremity for which she received schedule awards.

On appeal appellant argued that she was entitled to a schedule award for spinal impairment.

**FACTUAL HISTORY**

On January 18, 2006 appellant, then a 40-year-old letter carrier, filed an occupational disease claim alleging that she had developed joint disease and arthritis of the left thumb, back, knees and right foot. She attributed her condition to heavy lifting, walking and repetitive thumb

motions performing her job duties. The Office accepted appellant's claim for permanent aggravation of degenerative arthritis of the lumbar spine with spondylolisthesis at L4-5, facet joint arthritis, osteoarthritis of the left knee, left thumb and right foot. Appellant briefly returned to work and the Office accepted that she sustained a recurrence of total disability beginning April 13, 2007. She returned to light-duty work on August 20, 2007.

On June 7, 2007 Dr. Paul J. Mantalbano, a Board-certified orthopedic surgeon, performed an L4-5 laminectomy including bilateral L4 complete medial facetectomy, resection of left L4-5 synovial cyst, L4-5 posterior interlaminar interbody arthrodesis, placement of prosthetic Peek device, L4-5 posterolateral transverse process arthrodesis, right iliac crest bone graft harvest and morselized allograft.

Appellant's attending physician, Dr. Monte H. Moore, completed a report on September 5, 2007 and found that appellant had reached maximum medical improvement. He noted appellant's symptoms of aching pain in the left knee, numbness in the right leg and foot and aching discomfort in the lower back with numbness in the gluteal area and anterior proximal thighs. Dr. Moore found that appellant ambulated with a normal gait and had full range of motion of her hips. He evaluated appellant's left first carpometacarpal joint and found mild joint enlargement without crepitus. Radial abduction was 50 degrees and abduction was two centimeters while opposition was five centimeters. Appellant had left knee flexion of 118 degrees and full extension with mild crepitus and joint line tenderness. In regard to her left lower extremity, the first metatarsal phalangeal joint demonstrated 32 degrees of dorsiflexion, 40 degrees of flexion with medial enlargement and mild tenderness. Appellant had normal strength, but an absent right Achilles reflex and trace reflex at the bilateral quadriceps tendons. Dr. Moore evaluated appellant's condition in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>1</sup> He found that a cartilage interval of three millimeters in the left knee was seven percent impairment of the left lower extremity. Dr. Moore found that appellant had six percent impairment of her left thumb or two percent impairment of the upper extremity. He granted appellant whole person impairment due to her spine.

Appellant returned to work on November 10, 2007. She filed a notice of recurrence of disability on January 2, 2008. By decision dated February 15, 2008, the Office denied appellant's claim for recurrence of disability.

The district medical adviser reviewed Dr. Weaver's report on April 24, 2008 and stated that appellant had not yet reached maximum medical improvement as her spinal surgery was only three months earlier.

On January 14, 2009 appellant requested a schedule award. In a letter dated January 15, 2009, the Office requested that she obtain a medical report addressing her permanent impairment for schedule award purposes. In a report dated May 13, 2009, Dr. Moore noted that appellant had degenerative arthritis of the left knee and had undergone arthroscopy. He also noted degenerative arthritis of the right foot, ankylosing spondylitis, history of fusion at L4-5 for degenerative spondylolisthesis and osteoarthritis of the right thumb. Dr. Moore found 112

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<sup>1</sup> A.M.A., *Guides*, 5<sup>th</sup> ed. (2000).

degrees of flexion in the left knee and full extension. Appellant had tenderness in the right foot at the base of her toe, 40 degrees of metatarsal phalangeal dorsiflexion and 20 degrees of plantar flexion. Dr. Moore found that she had an antalgic gait with decreased weight-bearing on the left side. He noted no abnormal neurological findings. Dr. Moore found that appellant had 27 percent impairment of the whole person in accordance with fifth edition of the A.M.A., *Guides* based on impairments of the spine, thumb and lower extremities.

The district medical adviser reviewed Dr. Moore's report on June 9, 2009 and found that his report was not sufficient as he provided an impairment rating for appellant's spine and extremities in terms of the whole person. He noted that Dr. Moore did not properly evaluate appellant's impairment as he relied on gait impairment. The district medical adviser found that a second opinion evaluation was necessary to determine appellant's impairment rating based on the Federal Employees' Compensation Act and the sixth edition of the A.M.A., *Guides*.

Appellant submitted a report from Dr. Stanley W. Moss, M.D., dated May 5, 2009. Dr. Moss noted performing her left knee surgery on June 12, 2008. He stated that appellant had torn medial meniscus, chondrocalcionosi with calcifications, a cartilage fracture Grade IV with some bare bone on both the medial femur and the medial tibia. Dr. Moss also found areas of bone touch bone on the medial compartment or significant post-traumatic degenerative arthritis related to the accepted meniscal tear. He noted that appellant walked with a limp, experienced pain at night and intermittent swelling as well as pain with activity. Dr. Moss noted crepitation, with full extension, 125 degrees of flexion. He found that appellant's ligaments were intact with no instability. Dr. Moss examined standing x-rays and found narrowing of the medial compartment width by 50 percent.

The Office referred appellant for a second opinion evaluation with Dr. Paul C. Collins, a Board-certified orthopedic surgeon, who completed a report on August 3, 2009. Dr. Collins noted appellant's history of injury and medical history. Appellant reported numbness in her left leg, as well as muscle weakness, walking pain, stiffness and aching. Dr. Collins found 122 degrees of flexion in the right knee and 114 degrees in the left knee with full extension. He found that appellant's sensory and motor function in both lower extremities was intact and that she did not have an impairment rating due to her accepted spinal conditions. Regarding appellant's right great toe, Dr. Collins found a Class 1 impairment of five percent.<sup>2</sup> He found a modifier of plus one.<sup>3</sup>

Concerning appellant's knee, Dr. Collins found seven percent impairment<sup>4</sup> based on a Grade 1 modifier for physical examination adjustment.<sup>5</sup> He evaluated appellant's left thumb

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<sup>2</sup> *Id.* at 507, Table 16-2.

<sup>3</sup> *Id.* at 519, Table 16-8.

<sup>4</sup> *Id.* at 511, Table 16-3.

<sup>5</sup> *Id.* at 517, Table 16-7.

noting the 25 percent reduction in range of motion from 5 to 70 degrees<sup>6</sup> or 1 percent impairment of the digit.

The district medical adviser reviewed this report on October 8, 2009 and found that appellant had no impairment to the lower extremities due to motor or sensory losses due to her accepted back injury. He also found degenerative joint disease of the right great toe was a Class 1 Grade C impairment of five percent.<sup>7</sup> Based on a Grade 1 mild functional impairment, Grade 1 mild physical examination adjustment and no clinical studies. Applying the formula of the sixth edition of the A.M.A., *Guides*,<sup>8</sup> the district medical adviser found  $(1-1) + (1-1) = 0$  for five percent right lower extremity impairment related to the right toe degenerative disc disease.

The district medical adviser agreed with Dr. Collins' application of the A.M.A., *Guides* for the left knee as well, noting that a partial medial meniscectomy with cartilage debridement<sup>9</sup> is a seven percent left lower extremity impairment including net adjustment for functional history<sup>10</sup> physical examination<sup>11</sup> and clinical studies<sup>12</sup> of  $(1-1) + (1-1) + (1-1) = 0$ . He also agreed with Dr. Collins evaluation of appellant's left thumb finding that the mild decrease in thumb range of motion was a Class 1 impairment of one percent impairment of the digit<sup>13</sup> which is a zero impairment of the left upper extremity.<sup>14</sup>

By decision dated October 14, 2009, the Office granted appellant a schedule award for five percent impairment of her right lower extremity and seven percent impairment of her left leg lower extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>15</sup> and its implementing regulations<sup>16</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of loss of use, of scheduled members or functions of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The

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<sup>6</sup> *Id.* at 468, Table 15-3.

<sup>7</sup> *Id.* at 507, Table 16-2.

<sup>8</sup> *Id.* at 521.

<sup>9</sup> *Id.* at 511, Table 16-3.

<sup>10</sup> *Id.* at 516, Table 16-6.

<sup>11</sup> *Id.* at 517, Table 16-7.

<sup>12</sup> *Id.* at 519, Table 16-8.

<sup>13</sup> *Id.* at 393, Table 15-2 and 468, Table 15-30

<sup>14</sup> *Id.* at 421, Table 15-12.

<sup>15</sup> 5 U.S.C. §§ 8101-8193, 8107.

<sup>16</sup> 20 C.F.R. § 10.404.

method used in making such determination is a matter which rests in the discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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*. As of May 1, 2009, any decision regarding a schedule award must be based on the sixth edition.<sup>17</sup>

The Act does not authorize the payment of schedule awards for the permanent impairment of the whole person.<sup>18</sup> Payment is authorized only for the permanent impairment of specified members, organs or functions of the body.

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.<sup>19</sup> Because neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine,<sup>20</sup> no claimant is entitled to such an award.<sup>21</sup>

Amendments to the Act, however, modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to a limb even though the cause of the impairment originated in the spine.<sup>22</sup>

### ANALYSIS

The Office accepted that appellant sustained employment-related injuries including permanent aggravation of degenerative arthritis of the lumbar spine with spondylolisthesis at L4-5, facet joint arthritis, osteoarthritis of the left knee, left thumb and right foot. Appellant requested a schedule award on January 14, 2009 and submitted a report from her attending physician, Dr. Moore. The Board finds, however, that Dr. Moore's report was not sufficiently detailed and well reasoned to establish appellant's permanent impairment for schedule award purposes. He did not apply the appropriate edition of the A.M.A., *Guides*, in this case the sixth edition when evaluating appellant's impairment. Furthermore, Dr. Moore found that appellant had impairments of her spine and couched his impairment ratings in terms of the whole person.

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<sup>17</sup> *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).

<sup>18</sup> *W.D.*, 61 ECAB \_\_\_ (Docket No. 10-274, issued September 3, 2010); *Ernest P. Govednick*, 27 ECAB 77 (1975).

<sup>19</sup> *W.D.*, *supra* note 18; *William Edwin Muir*, 27 ECAB 579 (1976).

<sup>20</sup> The Act itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

<sup>21</sup> *W.D.*, *supra* note 18. *Timothy J. McGuire*, 34 ECAB 189 (1982).

<sup>22</sup> *W.D.*, *supra* note 18. *Rozella L. Skinner*, 37 ECAB 398 (1986).

As noted above, the Act does not provide for impairment ratings of the back, spine or whole person and appellant is not entitled to a schedule award for such ratings.

The Office referred appellant to Dr. Collins for a second opinion evaluation and he properly applied the sixth edition of the A.M.A., *Guides* to appellant's physical findings. Dr. Collins noted that appellant had no motor or sensory impairment of the extremities due to her accepted back condition and properly found that as this was the only way of determining impairment due to these conditions, appellant was not entitled to a schedule award due to her back condition.

As found by the district medical adviser, Dr. Collins then rated each of appellant's affected scheduled members in accordance with the protocol and formula of the sixth edition of the A.M.A., *Guides*. This requires that the physician determine the class of diagnosis (CDX) and apply the appropriate grade modifiers for functional history, (GMFH) physical examination (GMPE) and clinical studies (GMCS) and apply the following formula (GMFH -CDX) + (GMPE - CDX) + (GMCS – CDX) to reach the appropriate grade within the class of diagnosis.<sup>23</sup>

The A.M.A., *Guides* provide that arthritis of the right great toe is a Class 1 impairment with ratings ranging from 1 to 13 percent.<sup>24</sup> As found by Dr. Collins and demonstrated by the district medical adviser appellant had no net adjustment to the default Grade C of five percent and therefore properly received an impairment rating of five percent for this schedule member.

In regard to appellant's left knee the A.M.A., *Guides* provide that a partial medial meniscectomy with cartilage debridement is a Class 1 mild problem with a default grade of seven.<sup>25</sup> The district medical adviser again demonstrated the appropriate adjustments to the formula to determine that the net adjustment was zero and that appellant was entitled to seven percent impairment of her left lower extremity.

Finally, the district medical adviser and Dr. Collins appropriately applied the A.M.A., *Guides* and agreed on the extent of appellant's left thumb impairment. The Board finds that the weight of the medical evidence establishes that appellant had seven percent impairment of her left lower extremity and five percent impairment of her right lower extremity for which she received schedule awards.

As noted above neither this nor any other appellant is entitled to a schedule award for impairment related solely to the spine or back. Therefore appellant's arguments to the contrary do not comport with the Act and she is not entitled to such an award.

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<sup>23</sup> A.M.A., *Guides* 521.

<sup>24</sup> *Id.* at 507, Table 16-2.

<sup>25</sup> *Id.* at 509, Table 16-3.

**CONCLUSION**

The Board finds that appellant has no more than seven percent impairment of her left lower extremity and five percent impairment of her right lower extremity for which she received schedule awards.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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