United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 11-466**
	)	**Issued: October 12, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 21, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) schedule award decision dated November 17, 2010. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue on appeal is whether appellant met her burden of proof to establish that she sustained more than a 35 percent permanent impairment to her right lower extremity, for which she received a schedule award.

FACTUAL HISTORY

On May 18, 2004 appellant, then a 48-year-old window distribution clerk, filed a traumatic injury claim alleging that on May 13, 2004 she was pushing a fork lift when she felt a "pop" with severe pain in her right knee which caused her to black out while in the performance

[1] 5 U.S.C. § 8101 *et seq.*

of duty. She stopped work on May 14, 2004 and returned on May 18, 2004. On June 7, 2004 OWCP accepted appellant's claim for right knee sprain. It expanded the claim to include medial meniscus tear of the right knee. Appellant received appropriate compensation benefits.[2]

The record reflects that on October 13, 2004 appellant filed a claim for a schedule award due to her right knee injury. By decision dated November 6, 2007, OWCP granted her a schedule award for a total of 100.8 weeks of compensation for a 35 percent permanent impairment of the right lower extremity.

On October 12, 2009 appellant's representative requested another schedule award and submitted medical evidence. In a September 30, 2009 report, Dr. William N. Grant, a Board-certified internist, noted appellant's history of injury and treatment. He examined appellant and provided findings which included that appellant walked with a limp and used a knee brace and cane to ambulate. Regarding the right knee, Dr. Grant advised that a marked synovial change and atrophy were noted along with a well-healed surgical scar and tenderness to palpation. Additionally, he indicated that there was a 15-degree flexion contracture and flexion to 55 degrees with severe joint laxity of the collateral ligaments noted. Dr. Grant diagnosed a right medial meniscus tear and right knee sprain. He utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2008) and referred to Table 16-3 finding that appellant's diagnosed condition (CDX), was a class 4.[3] Dr. Grant determined that Functional History (GMFH) was a grade 3 modifier pursuant to Table 16-6.[4] He stated that the Physical Examination (GMPE) was a grade 3 modifier according to Table 16-7.[5] Dr. Grant stated that clinical studies were unavailable. He utilized the net adjustment formula and advised that appellant had a class 4, grade A impairment of 50 percent of the right lower extremity according to Table 16-3.

In a January 13, 2010 report, OWCP's medical adviser advised that, based on Dr. Grant's report, he was unable to provide an impairment rating under the A.M.A., *Guides* based on inaccurate information. He advised that, while Dr. Grant used Table 16-3, none of the items listed in Table 16-3, class 4, were applicable for the accepted conditions which included right knee and ankle sprains as well as a right knee medial meniscus tear. The medical adviser recommended that appellant be sent for a second opinion examination.

On April 15, 2010 OWCP referred appellant to Dr. Michael J. Jurenovich, an osteopath and Board-certified orthopedic surgeon, for a second opinion. In a May 5, 2010 report, Dr. Jurenovich described her history of injury and treatment and utilized the A.M.A., *Guides*.

[2] The record reflects that appellant has a prior claim for a March 8, 1999 injury, accepted for right knee strain, right ankle sprain and right knee medial meniscus tear. File No. xxxxxx147. On July 13, 1999 appellant had a right knee arthroscopy, partial medial meniscectomy and chondroplasty of patella lateral facet. She returned to work with restrictions on August 2, 1999 and was released to full duty on August 30, 1999. On October 13, 2004 OWCP combined appellant's files under the present claim, File No. xxxxxx114.

[3] A.M.A., *Guides* 511.

[4] *Id*.

[5] *Id*. at 517.

He examined appellant and noted findings which included that she walked with a slight limp but did not wear a knee brace for support purposes. Dr. Jurenovich indicated that she had fairly good range of motion with minimal effusion and two or three well-healed scars. He advised that Lachman and drawer maneuvers were negative and noted that appellant reported mild medial joint line pain with hyperflexion of the right knee with no signs of infection in the knee. Dr. Jurenovich determined that she had full range of motion was of the right ankle. He opined that appellant could return to regular duty and reached maximum medical improvement as of the date of the examination, noting there was no change in her condition during the past several months. Dr. Jurenovich referred to Table 16-3 and determined that appellant had an impairment of six percent to the right lower extremity.[6]

In a June 2, 2010 report, OWCP's medical adviser, noted appellant's history of injury and treatment and utilized the A.M.A., *Guides.* He referred to the second opinion report of Dr. Jurenovich and opined that appellant reached maximum medical improvement on May 6, 2010. The medical adviser concurred with the findings provided by Dr. Jurenovich. He noted that Dr. Jurenovich did not provide a class or grade modifier, but explained that his findings were consistent with Table 16-3, for a meniscal tear, and that appellant would qualify as a class 1 with grade modifier B which corresponded to a six percent impairment of the right leg.

By decision dated June 11, 2010, OWCP denied appellant's claim for an increased schedule award. It found that the medical evidence did not demonstrate a permanent measurable scheduled impairment greater than that previously paid.

On June 22, 2010 appellant's representative requested a telephonic hearing, which was held on September 20, 2010. Appellant did not submit additional medical evidence rating her right leg impairment pursuant to the A.M.A., *Guides.*

In a November 17, 2010 decision, OWCP's hearing representative affirmed the June 11, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA[7] and its implementing regulations[8] sets 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, FECA 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. For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides*

[6] A.M.A., *Guides* 509.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[9]

In addressing lower extremity impairments, the sixth edition requires identifying the impairment class for the CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and Clinical Studies (GMCS).[10] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[11]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.[12]

ANALYSIS

OWCP accepted appellant's claim for appellant's claim for right knee sprain. It expanded the claim to include medial meniscus tear of the right knee.[13]

In support of his claim for an increased schedule award, appellant's representative provided a September 30, 2009 report from Dr. Grant, a Board-certified internist, who utilized the A.M.A., *Guides* and referred to Table 16-3.[14] While Dr. Grant determined that appellant had an impairment of 50 percent to the right upper extremity, it is unclear how he arrived at this determination. In referring to Table 16-3 on page 511, he did not note any class 4 diagnosis that corresponded with any of appellant's accepted conditions nor did he otherwise identify any specific diagnosis in the grid on page 511 for which her rating was based. The Board notes that page 511 does not identify a diagnosis for any of appellant's accepted conditions. Other tables in the A.M.A., *Guides* noted by Dr. Grant relate only to grade modifiers and do not pertain to a specific diagnosis. As Dr. Grant did not adequately explain how he used

[9] FECA Bulletin No. 09-03 (issued March 15, 2009). A.M.A., *Guides* (6th ed. 2008).

[10] A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[11] A.M.A., *Guides* 521.

[12] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

[13] The record also reflects that, on July 13, 1999, she had a right knee arthroscopy, partial medial meniscectomy, and chondroplasty of patella lateral facet.

[14] A.M.A., *Guides* 511. Table 16-3, the knee regional grid, provides a variety of diagnoses involving the knee to be used for rating impairment of the lower extremities. Page 511 list conditions pertaining to fracture, arthritis, arthrodesis and osteotomy/knee replacement.

the A.M.A., *Guides* to rate impairment pursuant to the A.M.A., *Guides*, his opinion is of diminished probative value.[15]

In a January 13, 2010 report, OWCP's medical adviser explained that he was unable to provide a permanent partial impairment based on Dr. Grant's report due to inaccurate information. For example, he noted that a class 4 diagnosis, as found by Dr. Grant, was not applicable for the accepted conditions which included right knee and ankle sprains as well as a right knee medial meniscus tear. The medical adviser recommended a second opinion examination.

In a May 5, 2010 report, Dr. Jurenovich, the second opinion physician, noted appellant's history, provided findings on his examination and rated permanent impairment. In determining appellant's impairment, he referred to the knee regional grid, Table 16-3 at page 509 of the A.M.A., *Guides*, and found that appellant had six percent impairment of the right leg. In a June 2, 2010 report, OWCP's medical adviser reviewed the findings of Dr. Jurenovich and concurred that appellant had six percent impairment of the right leg. Although he noted that Dr. Jurenovich did not specify a diagnosis class, he indicated that Dr. Jurenovich rating and findings were consistent with a class 1, grade B medial meniscus tear in Table 16-3, at page 509. The medical adviser noted that this corresponded to six percent permanent impairment of the leg.[16] He indicated that appellant reached maximum medical improvement on May 6, 2010. The Board notes that there is no other current medical evidence, in conformance with the sixth edition of the A.M.A., *Guides*, supporting that appellant has any greater permanent impairment of the right leg.

The Board finds that the May 5 and June 2, 2010 reports of Dr. Jurenovich and OWCP's medical adviser establish that appellant has no more than six percent impairment of the right leg pursuant to the A.M.A., *Guides*. As appellant previously received an award for 35 percent impairment to the right leg due to her right knee condition, she is not entitled to an additional award at this time.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained more than 35 percent permanent impairment to her right lower extremity, for which she received a schedule award.

[15] An opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment. *I.F.*, Docket No. 08-2321 (issued May 21, 2009).

[16] A.M.A., *Guides* 509.

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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