United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 11-1795**
	)	**Issued: August 2, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Antioch, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 28, 2011 appellant filed a timely appeal from a February 2, 2011 decision of the Office of Workers' Compensation Programs (OWCP) which granted her a schedule award. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than 19 percent permanent impairment of each leg for which she received a schedule award.

FACTUAL HISTORY

On April 4, 2001 appellant, then a 37-year-old letter carrier, injured her ankles, knees and wrist when she stepped off a porch and fell while delivering mail. OWCP accepted the claim for bilateral ankle strains, left knee strain, bilateral knee contusions, right knee meniscal tear,

[1] 5 U.S.C. §§ 8101-8193.

bilateral wrists contusion and lumbar strain.[2] It authorized arthroscopic surgery on the right knee which was performed on April 7, 2003 and July 12, 2004.

Initial 2001 medical reports diagnosed left knee strain, left ankle strain, bilateral knee contusions and hand abrasion. Appellant came under the treatment of Dr. Vatche Cabayan, a Board-certified orthopedist, in November 21, 2001 for bilateral knee and ankle pain from a work-related fall. Dr. Cabayan diagnosed anterior cruciate ligament tear of both knees. A December 19, 2001 magnetic resonance imaging (MRI) scan of the right knee revealed findings suggesting a partial tear or sprain of the anterior cruciate ligament and a grade 1 or 2 intrasubstance tear with the posterior horn of the medial meniscus. Dr. Cabayan noted a March 6, 2002 MRI scan of the left knee revealed grade 1 or 2 nonarticulating intrasubstance tear of the posterior horn of the medial meniscus and findings suggesting a partial tear of the anterior cruciate ligament. A November 7, 2002 left ankle MRI scan revealed chronic partial tears of the calcaneofibular and talofibular ligaments along the anterolateral aspect of the ankle and early degenerative joint disease. After conservative care failed, on April 7, 2003, Dr. Cabayan performed right arthroscopic surgery, synovectomy, chondroplasty and anterior cruciate ligament tightening and diagnosed chronic patellofemoral pain and partial tear of the anterior cruciate ligament. Appellant continued to have chronic right knee pain with laxity of the anterior cruciate ligament. On July 12, 2004 Dr. Cabayan performed right arthroscopic surgery, synovectomy and chondroplasty and diagnosed internal derangement of the right knee.

Appellant continued to be treated by Dr. Cabayan from October 28, 2008 to March 4, 2009 for bilateral knee and ankle pain. Dr. Cabayan noted her complaints of buckling, limping, swelling and stiffness. Appellant was also treated by Dr. Lawrence Weil, a Board-certified anesthesiologist, for low back pain with radiation into the right lower extremity. Dr. Weil diagnosed lateral L5-S1 disc protrusion by MRI scan and annular tear with radiculopathy as confirmed by electromyogram (EMG). He performed a series of right L5-S1 and S1-S2 transforaminal epidural steroid injections.

On April 8, 2009 appellant filed a claim for a schedule award. She submitted a March 11, 2009 report from Dr. Cabayan, who opined that she reached maximum medical improvement. Dr. Cabayan diagnosed bilateral knee internal derangement, status post arthroscopy twice on the right knee with synovectomy, chondroplasty and shrinkage of the anterior cruciate ligament; mild injury to the anterior cruciate ligament on the left, grade 2 changes along the medial meniscus and partial tear of the anterior talofibular ligament especially for the left ankle. Examination revealed normal deep tendon reflexes at the knees and ankles bilaterally, negative straight leg raises, normal sensory function to pinwheel throughout, strength was a grade 4 for quadriceps and hamstrings bilaterally and strength was a grade 5 for ankle dorsiflexion, plantarflexion and subtalar inversion and eversion with bilateral laxity of the ankles. Range of motion of the knees was 180 degrees of extension and 145 degrees of flexion, ankle dorsiflexion was 10 degrees and plantarflexion was 40 degrees, there was mild crepitation of the knees, tenderness on the patella and medial joint line bilaterally, anterior drawers test revealed mild laxity bilaterally of the knees, tenderness along the plafond at the knees with mild

[2] Appellant filed a claim for a March 6, 2006 injury sustained that was accepted for left foot contusion and left fourth toe contusion, claim File No. xxxxxx842. That claim is not currently before the Board on appeal.

instability to anterior drawer testing. Dr. Cabayan opined that appellant had 35 percent work-related impairment of each leg in accordance with the fifth edition of the A.M.A., *Guides.*[3] He arrived at this number by combining 23 percent impairment of each leg for lack of flexion and extension strength, 7 percent impairment of each leg for mild cruciate ligament laxity, 5 percent impairment of each leg for patellar chondromalacia and contusion and 5 percent impairment of each leg due to ankle laxity.

In an April 16, 2009 letter, OWCP requested that Dr. Cabayan submit an assessment of permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*[4] which OWCP was to begin using effective May 1, 2009.

In a letter dated April 20, 2009, Dr. Cabayan indicated that appellant's impairment rating was completed on September 3, 2008 and March 11, 2009 and that the fifth edition of the A.M.A., *Guides* would apply. He did not submit a revised impairment rating under the sixth edition of the A.M.A., *Guides.*

Appellant continued to submit reports from Dr. Cabayan dated April 15, 2009 to September 27, 2010, who treated her for low back, knees and left ankle pain. Dr. Cabayan recommended additional lumbar steroid injections. Also submitted were reports from Dr. Weil dated May 11 to November 23, 2009, who diagnosed lumbar discogenic pain with radicular component, facet joint changes and small disc herniations by MRI scan. Dr. Weil performed a series of epidural steroid injections.

In a September 16, 2010 letter, OWCP requested that Dr. Cabayan rate appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides.*

Appellant submitted reports from Dr. Cabayan dated September 27 to November 10, 2010, who treated her for bilateral knee pain and sacroiliac joint pain. Also submitted were reports from Dr. Weil dated September 27 to November 8, 2010, who diagnosed sacroiliac joint tenderness, lumbar discogenic pain and facet changes and recommended a trial of transforaminal steroid injections.

In a January 20, 2011 report, OWCP's medical adviser reviewed the medical record including Dr. Cabayan's March 11, 2009 report and opined that appellant reached maximum medical improvement on March 11, 2009. She noted that, under Chapter 16 of the sixth edition of the A.M.A., *Guides*, appellant had 19 percent impairment of each leg. The medical adviser explained that impairment due to bilateral ankle joint strain, under Table 16-2, Foot and Ankle Regional Grid, appellant had a default impairment of class 1, bilateral ankle joint ligamentous joint laxity with a mild ligamentous laxity, which yielded a grade C default impairment of five percent under Table 16-2, page 502 of the A.M.A., *Guides*. Applying the net adjustment formula at pages 516-22 of the A.M.A., *Guides*, she found that appellant had a net adjustment of two. The medical adviser adjusted the impairment rating two places to the right, for a grade E, to conclude that appellant had seven percent impairment of each leg for bilateral ankle joint

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

[4] *Id*. (6th ed. 2008).

ligamentous joint laxity. For the knees, under Table 16-3,[5] Knee Regional Grid, appellant had a class 1 impairment for bilateral joint cruciate or collateral joint laxity, mild, which yielded a grade C default impairment of 10 percent at Table 16-3, page 510 of the A.M.A., *Guides*. Applying the net adjustment formula at pages 516-22 of the A.M.A., *Guides*, the medical adviser considered appellant's grade modifiers and found a net adjustment of two. She adjusted the impairment rating, noting the default position was modified by two, for a grade E, concluding that appellant had a 13 percent impairment of each leg for bilateral joint cruciate or collateral joint laxity. The medical adviser used the Combined Values Chart, page 604 and opined that appellant had a 19 percent impairment of each leg. She noted that Dr. Cabayan utilized the fifth edition of the A.M.A., *Guides*, but that the sixth edition was the current standard for impairment determinations.

In a decision dated February 2, 2011, OWCP granted appellant a schedule award for 19 percent impairment for each lower extremity. The period of the award was from March 11, 2009 to April 16, 2011.

LEGAL PRECEDENT

The schedule award provision of FECA[6] and its implementing federal regulations[7] 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, 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[8] For decisions issued beginning May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[9]

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).[10] 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 Functional History (GMFH), Physical Examination (GMPE) and

[5] OWCP's medical adviser noted that the impairment for bilateral knee joint cruciate or collateral joint laxity was found in Table 16-2. This appears to be a typographical error as the knee joint impairment for this diagnosis is found in the Knee Regional Grid, Table 16-3, on page 510.

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id.* at § 10.404(a).

[9] FECA Bulletin No. 09-03 (issued March 15, 2009).

[10] A.M.A., *Guides* 3, section 1.3, ICF: A Contemporary Model of Disablement.

Clinical Studies (GMCS).[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] The grade modifiers are used on the net adjustment formula described above to calculate a net adjustment. The final impairment grade is determined by adjusting the grade up or down the default value C, by the calculated net adjustment.[13]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical consultant for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with OWCP medical consultant providing rationale for the percentage of impairment specified.[14]

ANALYSIS

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.[15] Appellant's accepted conditions included bilateral knee and ankle conditions. On February 2, 2011 she was granted a schedule award for 19 percent permanent impairment of the bilateral right lower extremities using the applicable table of the sixth edition of the A.M.A., *Guides*. The section of the A.M.A., *Guides* which rates diagnosis-based impairments for the lower extremities is located at Chapter 16, which states at page 497, section 16.2a that impairments are defined by class and grade.

Although Dr. Cabayan's March 11, 2009 report found 35 percent impairment of each leg, this report was based on the fifth edition of the A.M.A., *Guides*. OWCP subsequently asked that he rate impairment under the sixth edition of the A.M.A., *Guides* since, as noted, the sixth edition is to be used for decisions issued beginning May 1, 2009. Dr. Cabayan did not submit a responsive report. Thus, as he did not assess impairment under the appropriate edition of the A.M.A., *Guides*, his impairment rating is of little probative value.[16]

Consequently, OWCP properly had its medical adviser review the file[17] and she used findings contained in Dr. Cabayan's March 11, 2009 report to base her impairment rating under the sixth edition of the A.M.A., *Guides*. The medical adviser properly found that, in accordance with Table 16-2, Foot and Ankle Regional Grid, appellant's impairing diagnosis was bilateral ankle joint ligamentous joint laxity, mild, which she rated as class 1, with a five percent default

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

[12] *Id.* at 521.

[13] *Id.* at 497.

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

[15] *Supra* notes 12, 13.

[16] *See J.G.*, Docket No. 09-1128 (issued December 7, 2009).

[17] *J.Q.*, 59 ECAB 366 (2008) (it is well established that, when the examining physician does not provide an estimate of impairment conforming to the A.M.A., *Guides*, OWCP may rely on the impairment rating provided by a medical adviser).

impairment value. She applied grade modifiers and applied the net adjustment formula to find seven percent impairment of each leg due to the bilateral ankle conditions. For appellant's bilateral knee conditions, the medical adviser properly found that, in accordance with Table 16-3, Knee Regional Grid,[18] appellant's impairing diagnosis was bilateral joint cruciate or collateral joint laxity, mild, which she rated as class 1, which has a default 10 percent lower extremity impairment. She noted the applicable grade modifiers and used the net adjustment formula to find 13 percent impairment of each leg for bilateral knee conditions. The medical adviser combined the ankle and knee impairments to find 19 percent impairment of each leg.

OWCP's medical adviser properly explained her calculations under the sixth edition of the A.M.A., *Guides*. The Board finds that the weight of medical evidence establishes that appellant has no more than 19 percent permanent impairment of each leg. This rating was based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. As appellant did not submit any medical evidence referring to the sixth edition of the A.M.A., *Guides* to support impairment greater than the 19 percent for each leg, the Board will affirm OWCP's February 2, 2011 decision.

On appeal, appellant asserts that she wanted her schedule award to be calculated under the fifth edition of the A.M.A., *Guides*. As noted, OWCP began using the sixth edition of the A.M.A., *Guides*, effective May 1, 2009.[19] For decisions issued beginning May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used in determining schedule award impairment.[20] In this case, OWCP's medical adviser properly utilized the sixth edition of the A.M.A., *Guides* in calculating appellant's schedule award.

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 has 19 percent impairment of the bilateral lower extremities for which she received a schedule award.

[18] *Supra* note 3 at 510.

[19] *Supra* note 9.

[20] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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