

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

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B.A., Appellant)	
)	
and)	
)	Docket No. 12-939
)	Issued: August 29, 2012
U.S. POSTAL SERVICE, TENNESSEE)	
PERFORMANCE CLUSTER, Nashville, TN,)	
Employer)	
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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 March 22, 2012 appellant filed a timely appeal from the February 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying appellant's schedule award claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained any permanent impairment of her right leg.

FACTUAL HISTORY

OWCP accepted that on May 20, 2009 appellant, then a 49-year-old lead accounting technician, sustained a closed dislocation of her right hip, closed fracture of her right acetabulum, closed fracture of her right patella, contusions of her abdominal and chest walls,

¹ 5 U.S.C. §§ 8101-8193.

open wound of face without complication and localized primary osteoarthritis of her lower right leg due to a vehicular accident. It also accepted that she sustained an acute stress disorder due to her work-related physical injuries.

In a November 10, 2010 report, Dr. Jeffrey T. Adams, an attending Board-certified orthopedic surgeon, stated that appellant had a patella fracture that did not have articular surface displacement. Regarding the issue of impairment to appellant's right leg, he stated:

“This will be a 10 percent impairment to the lower extremity. Due to having a grade 3 modifier in her functional history of severe pain, this would be moved to a 13 percent impairment to the lower extremity for her patella fracture.

“She also suffered an acetabular fracture with this injury, which would be a 16 percent impairment to the lower extremity, but again with a grade 3 modifier, it moves it to an 18 percent impairment to her lower extremity.

“Eighteen percent plus 13 percent is a 29 percent impairment to the lower extremity using the Combined Value[s] Chart.”

On December 27, 2011 appellant filed a claim for a schedule award due to her accepted work injuries.

In a December 28, 2011 letter, OWCP requested that appellant submit additional medical evidence, including a report from her treating physician, in support of her schedule award claim.

Appellant submitted a January 6, 2012 report from Dr. Adams, who stated that she had 29 percent permanent impairment of her right leg under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009).²

In February 17, 2012 decision, OWCP denied appellant's schedule award claim. It found that she did not submit sufficient medical evidence in support of her claim of permanent impairment. OWCP discussed Dr. Adams' January 6, 2012 report, but noted that he did not discuss the rationale for his rating calculation.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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

² The top of the report indicated that it represented a final report for the Tennessee Department of Labor, Division of Workers' Compensation.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.⁶

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the knee and hip, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509 and Table 16-4 (Hip Regional Grid) beginning on page 512.⁷ After the class of diagnosis (CDX) is determined from each regional grid (including identification of a default grade value), the Net Adjustment Formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS). The Net Adjustment Formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁸

Proceedings under FECA are not adversary in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁹

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 the medical adviser providing rationale for the percentage of impairment specified.¹⁰

ANALYSIS

OWCP accepted that on May 20, 2009 appellant sustained a closed dislocation of her right hip, closed fracture of her right acetabulum, closed fracture of her right patella, contusions of her abdominal and chest walls, open wound of face without complication and localized primary osteoarthritis of her lower right leg.¹¹ Appellant filed a claim for a schedule award due

⁵ *Id.*

⁶ See FECA Bulletin No. 09-03 (issued March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

⁷ See A.M.A., *Guides* (6th ed. 2009) 509-15.

⁸ *Id.* at 515-22.

⁹ *Russell F. Polhemus*, 32 ECAB 1066 (1981).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010).

¹¹ OWCP also accepted that appellant sustained an acute stress disorder due to her work-related physical injuries.

to her accepted work injuries. OWCP denied her schedule award claim on the grounds that she did not submit sufficient medical evidence in support of her claim. It did not refer the matter to an OWCP medical adviser.

In support of her schedule award claim, appellant submitted November 10, 2010 and January 6, 2012 reports of Dr. Adams, an attending Board-certified orthopedic surgeon. The Board finds that, while the reports of Dr. Adams are not sufficiently rationalized to establish that he rated impairment under the A.M.A., *Guides*, they are sufficient to require OWCP to further develop whether appellant sustained permanent impairment entitling her to schedule award compensation.¹² OWCP did not comply with its procedures which provide for review of the matter by an OWCP medical adviser for an opinion concerning the nature and percentage of any ratable impairment in accordance with the A.M.A., *Guides*.¹³

In a November 10, 2010 report, Dr. Adams concluded that appellant had a 29 percent permanent impairment of her right leg. While he did not specify the standards he applied, it appears from the context of his report that he applied the sixth edition of the A.M.A., *Guides*. Dr. Adams noted that appellant had 13 percent impairment due to her patellar fracture and 18 percent impairment due to her acetabular fracture and applied grade modifiers to arrive at these ratings.¹⁴ He used the Combined Values Chart to combine the 13 and 18 percent losses and concluded that appellant had 29 percent impairment of her right leg.¹⁵ In a January 6, 2012 report, Dr. Adams generally stated that appellant had 29 percent permanent impairment of her right leg under the standards of the sixth edition of the A.M.A., *Guides*.

Therefore, the case will be remanded for additional development of the evidence regarding whether appellant met her burden of proof to show that she sustained permanent impairment entitling her to schedule award compensation. After such development it deems necessary, OWCP will issue an appropriate merit decision regarding this matter.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether OWCP properly denied appellant's claim for a schedule award.

¹² See *supra* note 9.

¹³ See *supra* note 10.

¹⁴ It appears that Dr. Adams applied Table 16-3 (Knee Regional Grid) beginning on page 509 and Table 16-4 (Hip Regional Grid) beginning on page 512. A.M.A., *Guides* 509-12. See *supra* notes 7 and 8.

¹⁵ A.M.A., *Guides* 604, Combined Values Chart.

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with decision of the Board.

Issued: August 29, 2012
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