United States Department of Labor
Employees' Compensation Appeals Board

Y.M., Appellant	)	
and	)	**Docket No. 11-1030**
	)	**Issued: February 17, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
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, 2011 appellant, through her attorney, filed a timely appeal from a March 14, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 this case.

ISSUE

The issue is whether appellant has more than a two percent permanent impairment of the left leg, for which she received a schedule award.

FACTUAL HISTORY

Appellant, a 52-year-old mail processor, injured her left knee on November 19, 2006, when she tripped on some metal screws protruding from the floor of her work area. She filed a claim for benefits on November 20, 2006, which OWCP accepted for left knee sprain.

[1] 5 U.S.C. § 8101 *et seq.*

In a June 19, 2010 report, received by OWCP on December 16, 2010, Dr. Daisy A. Rodriguez, a specialist in internal medicine, found that appellant had a nine percent left leg impairment pursuant to Table 16-3, Table 16-6, Table 16-7, Table 16-8 and Table 16-23 at pages 509, 516-17 and 523 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). She based this rating on a class 1, permanent impairment for a left knee sprain and degenerative joint disease; *i.e.*, arthritis, a mild problem. Dr. Rodriguez calculated an impairment at the knee regional grid, at Table 16-3 page 509 of the A.M.A., *Guides*.[2] Applying the net adjustment formula at pages 521-22 of the A.M.A., *Guides*,[3] and applying the grade modifiers at Table 16-6, Table 16-7 and Table 16-8, she found that appellant had a class 1 impairment, the rating utilized for a mild problem/mild deficit for the lower extremity. This translated to a mild problem for a sprain and moderate motion deficits, which, Dr. Rodriguez found, equated to an adjusted, grade E impairment. She found that the grade modifier at Table 16-6 for functional history was four, for a severe problem; the grade for physical examination at Table 16-7 was one and the grade at Table 16-8 for clinical studies was zero. Dr. Rodriguez then subtracted the grade modifier of one from four; this yielded a three adjusted grade, which yielded a grade E, nine percent left lower extremity impairment.

Appellant underwent x-ray testing and a magnetic resonance imaging (MRI) scan on March 12, 2010. The x-ray report indicated that mild medial joint space narrowing and mild-to-moderate degenerative changes involving the left knee joint. The MRI scan showed cortical thinning along the articulating surface of the patella showing chondromalacia of the patella, with small suprapatellar joint effusion. The report also showed subcortical foci of increased T2 signal along the medial aspect of the very anterior lateral femoral condyle; these were considered likely areas of degenerative change with overlying cortical thinning.

On December 15, 2010 appellant filed a claim for a schedule award.

Appellant was referred to Dr. Morris Draper, Board-certified in orthopedic surgery, for a second opinion examination. In a February 11, 2011 report, Dr. Draper found that she had a two percent permanent impairment for the left lower extremity under the A.M.A., *Guides*. He reviewed the March 12, 2010 MRI scan and noted that there were some degenerative changes and cortical thinning, with chondromalacia of the patella and small joint effusion of the left knee. Dr. Draper also determined that the films showed that the articular surface was about four millimeters into the joint surface, which was consistent with prior MRI scan results. He stated:

> "Using the [A.M.A., *Guides*] and the Knee Regional Grid, Table 16-3, pages 509 through 511, I determine that the diagnostic criteria for osteoarthritis of the knee cannot be used to calculate impairment because the patient has a 4 [millimeter] cartilage interval with no full thickness articular cartilage defect. This is a requirement for permanent knee joint arthritis, page 511 in the middle of the page…. Consequently, I am using the diagnostic criteria for soft tissue injury which includes contusion of the left knee on page 509, Table 16-3, Knee Regional

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

[3] *Id*. at 521-22.

> Grid, Lower Extremity Impairments. Using that criteria, the patient fits a [c]lass [1] Mild Problem because she has significant palpable findings documented above and consistent motion deficits. Using the [A.M.A., *Guides*], the default impairment is [two percent] which is [g]rade C for the contusion -- [two percent]. I am using the Net Adjustment Formula Calculation."

Dr. Draper found that appellant had a default impairment of class 1 based on a left knee contusion, which yielded a grade C impairment of two percent at Table 16-3, page 509 of the A.M.A., *Guides*. He applied the net adjustment formula at pages 521-22 of the A.M.A., *Guides*, finding that the grade modifier at Table 16-6 for functional history was one, the grade modifier for physical examination at Table 16-7 was two and the grade modifier at Table 16-8 for clinical studies was one. Dr. Draper then subtracting the grade modifier of one from the grade modifiers of one, two and one at Table 16-6, Table 16-7 and Table 16-8; this adjusted appellant's impairment for left knee contusion from grade C to grade D, for a two percent final impairment of the left lower extremity.

In a report dated March 1, 2011, OWCP's medical adviser, relying on Dr. Draper's February 4, 2011 report, argued that appellant had two percent impairment of the left leg pursuant to the A.M.A., *Guides*. He stated that Dr. Rodriguez's June 19, 2010 report contained insufficient medical evidence to support an impairment rating for arthritis of the left knee. OWCP's medical adviser found that her rating was not in conformance with the A.M.A., *Guides*, which states on page 516 that "If the grade for functional history differs by 2 or more grades from that defined by Physical Examination or Clinical Studies the Functional History should be assumed to be unreliable. If the Functional History is determined to be unreliable or inconsistent with other documentation, it is excluded from the grading process." OWCP's medical adviser stated that because Dr. Rodriguez's functional history grade modifier of four was greater/different than two in relation to the grade modifier of one accorded for physical examination, it should have been excluded. He concurred with Dr. Draper that the impairment rating should not have been based on arthritis. OWCP's medical adviser noted that the March 12, 2010 x-ray indicated mild-to-moderate degenerative changes involving the left knee joint. He further noted that Dr. Draper stated in his February 4, 2011 report that the articular surface was about four millimeters, consistent with previous MRI scan reports.[4]

By decision dated March 14, 2011, OWCP granted appellant a two percent award for the left lower extremity for the period December 3, 2009 to January 12, 2010, for a total of 5.76 weeks of compensation.

[4] The Board notes that Dr. Rodriguez indicated that the cartilage interval was 3.33 millimeters in the medial compartment. While this differs from Dr. Draper's interpretation, the Board finds that this distinction is not relevant because Table 16-3, page 511 of the A.M.A., *Guides* indicates that a class 1 impairment should be based on a three millimeter cartilage interval, for a full-thickness articular cartilage defect.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing regulations[6] 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 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.[7] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[8]

ANALYSIS

In this case, OWCP accepted a condition of left knee sprain. Appellant subsequently sought a schedule award and submitted Dr. Rodriguez's June 19, 2010 report indicating that she had a nine percent left lower extremity impairment pursuant to the sixth edition of the A.M.A., *Guides*. OWCP's medical adviser reviewed this report and Dr. Draper's February 4, 2011 report finding a two percent left lower extremity impairment; he then considered appellant's entitlement to a schedule award by applying 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. This section states:

> "The Impairment Class (IC) is determined first, by using the corresponding diagnosis-based regional grid. The grade is then determined using the adjustment grids.
>
> "Once the impairment class has been determined, based on the diagnosis, the grade is initially assigned the default value, C. The final impairment grade, within the class, is calculated using the grade modifiers or [nonkey] factors, as described in [s]ection 16.3. Grade modifiers include functional history, physical examination and clinical studies. The grade modifiers are used on the net adjustment formula described in [s]ection at 16.3d 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."[9]

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides*. (6th ed. 2009).

[7] *Id.*

[8] *Veronica Williams*, 56 ECAB 367, 370 (2005).

[9] A.M.A., *Guides* 497.

Using the formula above and the net adjustment formula outlined at pages 521-22 of the A.M.A., *Guides*, OWCP's medical adviser, adopting Dr. Draper's findings, found that appellant had a class 1 impairment; *i.e.*, a mild problem. He then applied the net adjustment formula at pages 521-22 of the A.M.A., *Guides*, finding that appellant had a grade modifier of one for functional history, two for physical examination and one for clinical studies at Table 16-6, Table 16-7 and Table 16-8, then subtracting from these totals from the grade modifier of one. Based on this calculation, the medical adviser adjusted her impairment for left knee contusion from grade C to grade D, for a final two percent left lower extremity impairment. The Board finds that he properly determined that appellant had a two percent permanent impairment of his left lower extremity, as he calculated this rating based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*.[10] The only other impairment rating in the record was that of Dr. Rodriguez, who found that appellant had a nine percent left lower extremity impairment. This report is of diminished probative weight, however, as she based this rating upon the diagnosis of arthritis.[11] OWCP's medical adviser properly determined that Dr. Rodriguez' rating was not in conformance with the A.M.A., *Guides* at page 516, which stipulates that if the grade for functional history cannot differ by two or more grades from that defined by physical examination or clinical studies it shall be considered unreliable and therefore excluded from the grading process. In addition, Dr. Draper stated in his February 4, 2011 report that the articular surface cartilage interval was about four millimeters, consistent with previous MRI scan reports; this exceeds the standard of three millimeters set forth at Table 16-3, for a class 1 impairment based on a full-thickness articular cartilage defect.[12]

OWCP properly found that the opinion of OWCP's medical adviser constituted sufficient medical rationale to support its March 14, 2011 schedule award decision. As appellant did not submit any medical evidence to support an additional schedule award greater than the two percent for the left lower extremity already awarded, the Board will affirm the March 14, 2011 decision.

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

[10] Appellant's attorney questioned whether OWCP's medical adviser authored the February 4, 2011 report which bears his signature. However, he has not submitted evidence to support his contention that the impairment rating was prepared by someone other than OWCP's medical adviser.

[11] The Board notes that a description of appellant's impairment must be obtained from her physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005).

[12] Counsel argues that OWCP should have referred the MRI scan to be reviewed to a Board-certified radiologist to resolve the issue of whether the cartilage interval was 4 millimeters, as Dr. Draper found or 3.3 millimeters, as Dr. Rodriguez indicated. As noted above, however, the difference is not relevant because even if the measurement is 3.3 millimeters it does not meet the standard outlined at Table 16-3 for a class 1 impairment based on a full-thickness articular cartilage defect.

CONCLUSION

The Board finds that appellant has more than a two percent permanent impairment of the left lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 14, 2011 decision is affirmed.

Issued: February 17, 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