

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

A.J., Appellant

and

**U.S. POSTAL SERVICE, HOUSTON
PERFORMANCE CLUSTER, Houston, TX,
Employer**

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**Docket No. 11-1610
Issued: February 9, 2012**

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 June 29, 2011 appellant filed a timely appeal from the June 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) granting her a schedule award. 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 met her burden of proof to establish that she has more than a seven percent permanent impairment of her left leg, for which she received a schedule award.

FACTUAL HISTORY

OWCP accepted that on November 7, 2003 appellant, then a 43-year-old letter carrier, sustained bilateral knee effusion and a tear of the right medial meniscus when she fell to her

¹ 20 C.F.R. § 8101 *et seq.*

knees at work. Appellant received compensation for periods of disability and filed a claim for a schedule award due to her work injuries.

In a June 16, 2010 report, Dr. Ernest Roman, an attending Board-certified internist, discussed appellant's medical history, including the November 7, 2003 work injury. He indicated that appellant complained of constant, dull, deep, aggravating ache in her left knee as well as crepitus on range of motion. Appellant described sharp, stabbing pain associated with activities that primarily involved the medial compartment. Dr. Roman noted that appellant described a reduction in the activities of her daily living profile due to knee pain. He reported examination findings for appellant's left knee,² noting the fact that no effusion discoloration was seen on visual inspection and that the vascular stress test was positive. Palpable tenderness was appreciated over the lateral aspect of the left knee involving the patella and range of motion revealed 100 degrees of flexion and 0 degrees of extension lag. Dr. Roman stated that the Lachman test and the anterior drawer sign were negative, but that the Apley/McMurray test was positive involving the left lateral meniscus. Dr. Roman diagnosed sprain/strain, tendinitis and osteoarthritis of appellant's left knee. With respect to the permanent impairment of her left leg under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), Dr. Roman stated:

“The examinee falls in the region and Table 16-3 knee. Her criteria is strain/sprain, tendinitis, or ruptured tendon with mild range of motion deficits placing her in class 1 with a mid-range default value of seven percent. Functional history and physical exam[ination] do not add to or take away from the seven percent impairment rating involving the left knee. The examinee is assessed a seven percent lower extremity impairment for left knee findings.”

In a May 27, 2011 report, Dr. Ronald Blum, a Board-certified internist serving as an OWCP medical adviser, stated that he had been asked to review the June 16, 2010 report of Dr. Roman for the purpose of determining the permanent impairment of appellant's left leg. Dr. Blum noted that maximum medical improvement was achieved on June 16, 2010, the date of Dr. Roman's examination. He stated that appellant's condition under Table 16-3 fell under the class 1 diagnostic category for knee strain and equaled the default value of seven percent found on that table. Dr. Roman concluded that appellant had a seven percent impairment of her left leg.

In a June 6, 2011 decision, OWCP granted appellant a schedule award for a seven percent permanent impairment of her left leg. The award ran for 20.16 weeks from June 16 to November 4, 2011 and was based on the June 21, 2010 report of Dr. Roman and the May 27, 2011 report of Dr. Blum.

² Dr. Roman also provided findings for appellant's right knee, but the present appeal concerns appellant's left leg impairment.

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 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, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.⁷ After the Class of Diagnosis (CDX) is determined from the Knee 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 Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.⁹

ANALYSIS

OWCP accepted that on November 7, 2003 appellant sustained bilateral knee effusion and a tear of her right medial meniscus and she later filed a claim for a schedule award due to her work injuries. On June 6, 2011 it granted appellant a schedule award for a seven percent permanent impairment of her left leg. The award was based on the June 21, 2010 report of Dr. Roman, an attending Board-certified internist, and the May 27, 2011 report of Dr. Blum, a Board-certified internist serving as an OWCP medical adviser.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.*

⁶ See FECA Bulletin No. 9-03 (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) 509-11.

⁸ *Id.* at 515-22.

⁹ *Id.* at 23-28.

The Board notes that OWCP properly relied on the reports of Dr. Roman and Dr. Blum when granting appellant a schedule award for a seven percent permanent impairment of her left leg. Appellant has not submitted medical evidence showing that she has a higher left leg impairment under the standards of the sixth edition of the A.M.A., *Guides*.¹⁰

In his May 27, 2011 report, Dr. Roman indicated that, under Table 16-3 (Knee Regional Grid) of the sixth edition of the A.M.A., *Guides*, appellant fell under a class 1 diagnostic category for strain, tendinitis or ruptured tendon which meant that she had a default rating of seven percent for her left leg under this table.¹¹ Dr. Roman further evaluated appellant's left knee condition under the grade modifier scheme, but found that assessment of the functional history and physical examination grade modifiers did not decrease or increase the default rating of seven percent derived from Table 16-3.¹² The Board notes that Dr. Roman's assessment of appellant's grade modifiers is consistent with the relevant findings of record, including the findings Dr. Roman reported during his June 21, 2010 examination. Dr. Roman properly concluded that appellant had a seven percent permanent impairment of her left leg. In a May 27, 2011 report, Dr. Blum indicated that he agreed with Dr. Roman's rating methodology and also found that under Table 16-3 appellant had a seven percent permanent impairment of her left leg.

The record does not contain any other report that evaluates appellant's left leg impairment under the sixth edition of the A.M.A., *Guides*. Appellant has not submitted evidence showing that she has more than a seven percent permanent impairment of her left leg.

On appeal, appellant indicated that she also sustained a work-related injury to her right leg and questioned why she had not received a schedule award determination regarding her right leg. The only OWCP decision within the Board's jurisdiction is the June 6, 2011 schedule award decision concerning appellant's left leg and the matter of appellant's entitlement to a schedule award for her right leg is not currently before the Board. Appellant may request a schedule award or increased schedule award before OWCP 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 has more than a seven percent permanent impairment of her left leg, for which she received a schedule award.

¹⁰ The sixth edition of the A.M.A., *Guides* became effective on May 1, 2009 and therefore it was appropriate to apply the standards of this edition. *See supra* note 6.

¹¹ *See* A.M.A., *Guides* 509, Table 16-3 (Knee Regional Grid).

¹² *Id.* at 516-17, Tables 16-6 and 16-7.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2012
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