United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 12-344**
	)	**Issued: June 13, 2012**
DEPARTMENT OF VETERANS AFFAIRS, SIERRA NEVADA HEALTH CARE CENTER, Reno, NV, Employer	)	

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 December 2, 2011 appellant filed a timely appeal from the November 4, 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 10 percent impairment of her right lower extremity, for which she previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 5, 2007 appellant, then a 61-year-old nursing assistant, sustained a traumatic injury in the performance of duty while transferring a patient from a bed.[2] OWCP accepted her claim for sprain of the right lateral collateral knee ligament and for an old bucket handle tear of the right medial meniscus. Appellant underwent partial medial and lateral meniscectomies. On October 2, 2008 she received a schedule award for a 10 percent impairment of her right lower extremity. This was a diagnosis-based estimate for partial medial and lateral meniscectomies under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

On February 26, 2010 appellant filed a claim for compensation alleging that on February 14, 2010 her right knee, which was still sore, swelled up and hurt very bad after she had to work all over the hospital several days in a row, covering three floors because of a shortage. OWCP considered this a new injury and created another case file, which it doubled with the previous case.[3] It accepted appellant's claim, once again, for an old bucket handle tear of the right medial meniscus. Appellant underwent another partial medial meniscectomy and chondroplasty of the patella, trochlear, lateral tibial plateau and medial femoral condyle.

After appellant inquired about an additional schedule award, OWCP referred her, together with the medical record and a statement of accepted facts, to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for an impairment evaluation. Dr. Swartz had performed the impairment examination that led to appellant's schedule award in 2008. He related her history and complaints and described his findings on physical examination.

An x-ray of the right knee showed a medial compartment measuring 2.5 millimeters and a lateral compartment measuring a normal 7 millimeters. Using Table 16-3, page 511 of the sixth edition of the A.M.A., *Guides*,[4] Dr. Swartz noted that a three millimeter cartilage interval of the primary knee joint has a default impairment value of seven percent. He considered this an appropriate default impairment value, as appellant's 2.5 millimeter cartilage interval was more reasonably rounded up to three than down to two. Dr. Swartz adjusted the default impairment value down one percent for functional history, as appellant did not use a walking aid and did not walk with a limp. He then adjusted the impairment value up one percent for physical examination, as she did show moderate palpatory findings. As a result, Dr. Swartz determined that appellant had a seven percent impairment of her right lower extremity due to primary knee joint arthritis.

OWCP's medical consultant reviewed Dr. Swartz's impairment evaluation and found that the record supported a seven percent impairment based on roentgenographic narrowing of the right medial compartment.

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[2] OWCP File No. xxxxxx844.

[3] OWCP File No. xxxxxx836 (master file).

[4] A.M.A., *Guides* 511 (6th ed. 2009) (Table 16-3).

In a May 23, 2011 decision, OWCP denied an additional schedule award. It explained that, as appellant had already received a schedule award for a 10 percent impairment of her right lower extremity, her current 7 percent rating did not entitle her to additional compensation.

On November 4, 2011 OWCP's hearing representative affirmed the May 23, 2011 decision.

LEGAL PRECEDENT

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.[5] Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[6]

ANALYSIS

Diagnosis-based impairment is the primary method of evaluating the lower extremity. Impairment is determined first by identifying the relevant diagnosis, then by selecting the class of the impairment (no objective problem, mild problem, moderate problem, severe problem or very severe problem approaching total function loss), which will provide a default impairment rating and finally by adjusting the default rating up or down using appropriate grade modifiers or nonkey factors, such as functional history, physical examination or clinical studies.[7]

Table 16-3 of the A.M.A., *Guides* provides diagnosis-based impairment values for the knee region. Dr. Swartz, the orthopedic surgeon, evaluated appellant's impairment and found that primary knee joint arthritis was the relevant diagnosis. This diagnosis is found on page 511 of the A.M.A., *Guides*. To determine whether appellant's arthritis was a mild or moderate problem, Dr. Swartz noted that x-rays showed a 2.5 millimeter cartilage interval in the medial compartment. This placed her arthritis squarely on the border of mild and moderate. Exercising discretion, Dr. Swartz rounded the measurement to three millimeters, which he found more reasonable. This was consistent with appellant's functional history, which was indicative of a problem that was less than mild. Further, the rounding made practical sense because if appellant's arthritis should at some point in the future deteriorate the cartilage interval to two millimeters, indicative of a moderate problem, she may be entitled to an additional schedule award at that time.

The default impairment value for mild primary knee joint arthritis is seven percent. Dr. Swartz correctly adjusted this down one percent because her functional history was better than mild. He then correctly adjusted this up one percent because palpatory findings on physical

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

[7] A.M.A., *Guides* 497. When clinical studies are used to select the class of impairment, the same findings may not be used again as grade modifiers to adjust the rating. A.M.A., *Guides* 500.

examination were worse than mild; they were moderate. After the two adjustments, the impairment value was back to seven percent.

The Board finds that Dr. Swartz correctly applied the standards set forth in the sixth edition of the A.M.A., *Guides* to determine appellant's right lower extremity impairment due to primary knee joint arthritis. As this impairment is less than the 10 percent impairment for which appellant has already received a schedule award, she is entitled to no additional compensation. The Board will therefore affirm OWCP's November 4, 2011 decision.

The Board notes that OWCP accepted appellant's February 14, 2010 injury for an old bucket handle tear of the right medial meniscus, a condition that required a second partial medial meniscectomy. Appellant had previously undergone partial medial and lateral meniscectomies, so her most recent surgery left her, as before, with partial medial and lateral meniscectomies. Neither meniscectomy was total. According to Table 16-3, page 509, the default impairment value for partial medial and lateral meniscectomies is 10 percent. Because her functional history and physical examination warranted no net adjustment, appellant's impairment rating based on the accepted meniscal injuries remains 10 percent, the same rating she received in her October 2, 2008 schedule award based on the previous edition of the A.M.A., *Guides*. Dr. Swartz did not use meniscal injury to rate her current impairment, as he considered her arthritis to be the more relevant diagnosis. The Board wanted appellant to understand that even if she were rated on her accepted meniscal injuries, as she was in her first evaluation, the result would have been the same. The medical evidence does not support more than a 10 percent impairment of her right lower extremity. For that reason, appellant is not entitled to additional compensation.

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 no more than a 10 percent impairment of her right lower extremity. Appellant is not entitled to additional schedule award compensation at this time.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 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