United States Department of Labor
Employees' Compensation Appeals Board

Y.E., Appellant	)	
	)	**Docket No. 13-729**
and	)	**Issued: August 13, 2013**
	)	
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Tampa, FL, 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
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 7, 2013 appellant, through her attorney, filed a timely appeal from the January 30, 2013 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 her right leg.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 44-year-old nurse, injured her right knee on January 24, 2008 when she slipped and fell to the floor. OWCP accepted her claim for sprain of the right lateral collateral ligament, derangement of the anterior and posterior horns of the right medial meniscus.

On May 22, 2008 Dr. Anthony Infante, an osteopath, performed arthroscopic surgery to repair appellant's torn right medial meniscus. He had appellant undergo a second procedure on August 22, 2008 to repair a right knee skin wound with irrigation and debridement.

In order to determine appellant's current condition and any permanent impairment due to her accepted right knee conditions, OWCP referred her to Dr. William Dinenberg, Board-certified in orthopedic surgery, for a second opinion examination. In a report dated July 18, 2012, Dr. Dinenberg reviewed the medical history and the statement of accepted facts and listed findings on examination. He advised that appellant's current objective findings included effusion on her right knee with a range of motion of 0 to 95 degrees, positive medial joint line tenderness and positive patellafemoral compression pain on the right. Dr. Dinenberg stated that appellant had arthroscopic surgical findings which revealed grade 4 chondromalacia of the patella and of the medial femoral condyle, in addition to a partial anterior cruciate ligament tear through the anterior cruciate ligament; he asserted that this was stable with at least 80 percent remaining.

On examination Dr. Dinenberg stated that appellant had objective findings which supported a diagnosis of right knee sprain with partial anterior cruciate ligament tear and degenerative joint disease of the right knee. He noted that she had a sprain of the lateral collateral ligament and derangement of the medial meniscus but advised that it did not appear that she had any tears of the medial meniscus and no evidence of a lateral collateral ligament sprain. Dr. Dinenberg opined that the conditions either did not exist initially or had resolved. He found that appellant had no impairment from these conditions. Appellant currently had symptoms from her degenerative joint disease at the patellofemoral joint space and the medical joint space. Dr. Dinenberg did not believe that appellant was at maximum medical improvement. He recommended a right total knee arthroplasty.

In an August 8, 2012 report, Dr. Martin Fritzhand, Board-certified in orthopedic surgery, rated a two percent impairment of the right lower extremity pursuant to the American Medical Associations, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). Under Table 16-3, Knee Regional Grid, Lower Extremity Impairments, at page 509;[2] the section pertaining to contusion or other soft tissue lesion impairments, appellant's right knee condition yielded a class 1 rating for consistent motion deficits.[3] Using the Adjustment Grid, Functional History, at Table 16-6, page 516 of the A.M.A., *Guides*,[4] Dr. Fritzhand found that

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

[3] The Board notes that although appellant underwent two surgeries on her right knee, both of which were authorized by OWCP, Dr. Fritzhand chose to rate his diagnosis-based impairment based on appellant's accepted right knee arthritis.

[4] A.M.A., *Guides* 516.

appellant had a grade modifier of 1 for functional history based on a score of 21 for a daily activities lower limb questionnaire. With regard to the physical examination, he assigned a grade modifier of one, for a mild problem, for minimal palpatory findings, consistently documented, without observed abnormalities, pursuant to Table 16-7, section 16.3b at page 517. Dr. Fritzhand found a grade modifier of 1 for clinical studies, a mild problem pursuant to Table 16-8, page 519 of the A.M.A., *Guides*.[5] The August 10, 2011 x-ray confirmed the diagnosis of arthritis. Dr. Fritzhand compared the net adjustments from functional history, physical examination and clinical studies, all with grade modifiers of 1, at the net adjustment formula at page 521 of the A.M.A., *Guides*. This yielded a diagnosis of class 1, mild problem, for a grade C remaining C, which totaled a two percent right lower extremity impairment.[6]

On September 10, 2012 appellant filed a claim for a schedule award based on a partial loss of use of her right lower extremity.

In an October 4, 2012 report, an OWCP medical adviser reviewed Dr. Fritzhand's findings and concurred that appellant had a two percent right leg impairment. He noted that an August 10, 2011 x-ray showed an articular cartilage thickness of four millimeters; however, this loss did not qualify for a separate impairment for arthritis under Table 16-3, page 511, the knee regional grid.[7]

By decision dated January 30, 2013, OWCP granted appellant a schedule award for a two percent permanent impairment of the right lower extremity. It ran for the period January 1 to February 10, 2010, a total of 5.76 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of FECA[8] and its implementing regulations[9] 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.[10] The claimant has the burden of proving

[5] *Id.* at 519.

[6] *Id.* at 511.

[7] *Id.* at 521.

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

[10] *Id.*

that the condition for which a schedule award is sought is causally related to his or her employment.[11]

ANALYSIS

OWCP accepted a sprain of the right cruciate ligament and a torn medial meniscus of the right knee. It granted appellant a schedule award for two percent impairment of the right leg, relying on the impairment rating from Dr. Fritzhand.

The Board notes that the A.M.A., *Guides* directs examiners to rate diagnosis-based impairments for the lower extremities pursuant to Chapter 16, which states at page 497, section 16.2a that impairments are defined by class and grade.[12] In accordance with this section the examiner is instructed to utilize the net adjustment formula outlined at pages 521-22 of the A.M.A., *Guides*,[13] to obtain the proper impairment rating. Dr. Fritzhand related his findings to the applicable tables and figures of the A.M.A., *Guides*. He found that appellant had a two percent impairment of the right lower extremity based on the Knee Regional Grid, Lower Extremity Impairments at Table 16-3, page 509 of the A.M.A., *Guides*. Dr. Fritzhand applied the section pertaining to contusion or other soft tissue lesion impairments, appellant's right knee condition yielded a class 1 rating for consistent motion deficits.[14]

OWCP's medical adviser noted that appellant was entitled to the rating method which afforded her the greater degree of impairment. He found that a diagnosis-based impairment methodology was the preferred means of rating appellant's right knee impairment. The medical adviser stated that appellant underwent surgical treatment for both the medial meniscus and anterior cruciate ligament laxity. Pursuant to page 389 of the A.M.A., *Guides*, "if more than one diagnosis can be used, the highest causally related impairment rating should be used; this will generally be the more specific diagnosis."[15] Based on this principle, the medical adviser found that because anterior cruciate ligament laxity provided a higher rating, he would rely on this diagnosis; there was no additional impairment for the partial meniscectomy.

Using the Adjustment Grid, Functional History, at Table 16-6, page 516 of the A.M.A., *Guides*,[16] Dr. Fritzhand found that appellant had a grade modifier of 1 for functional history based on a score of 21 for a daily activities lower limb questionnaire. With regard to physical examination, he assigned a grade modifier of 1, for a mild problem, for minimal palpatory findings, consistently documented, without observed abnormalities, pursuant to Table 16-7,

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

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

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

[14] The Board notes that although appellant underwent two surgeries on her right knee, both of which were authorized by OWCP, Dr. Fritzhand chose to rate his diagnosis-based impairment based on appellant's accepted right knee arthritis.

[15] A.M.A., *Guides* 389.

[16] *Id.* at 516.

section 16.3b, page 517. Dr. Fritzhand found a grade modifier of 1 for clinical studies, a mild problem pursuant to Table 16-8, page 519 of the A.M.A., *Guides.*[17] He noted an August 10, 2011 x-ray confirmed the diagnosis of arthritis.

Dr. Fritzhand applied the net adjustments from functional history, physical examination and clinical studies, all with grade modifiers of 1, to the net adjustment formula at page 521 of the A.M.A., *Guides*. This yielded a diagnosis of class 1, mild problem, for a grade C remaining C, for two percent lower extremity impairment. Based on Dr. Fritzhand's report, OWCP found that he calculated impairment based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*. As noted, Dr. Fritzhand chose to rate his diagnosis-based impairment based on appellant's accepted arthritis condition, rather than according an impairment rating based on the two surgeries she underwent to repair her torn medial meniscus and damaged skin. Pursuant to Table 16-3, based upon the diagnosis of meniscal tear, appellant's meniscal repair, rated as a class C, would also result in a default rating of two percent permanent impairment of the right knee.

On appeal, appellant's attorney noted that Dr. Dinenberg, the second opinion physician, advised that appellant was a candidate for right knee replacement surgery. He contends that, based on Dr. Dinenberg's opinion, appellant's patellafemoral arthritis and the severity of her right knee condition are clearly consequential to the work injury. Counsel asserted that, although appellant is very young to be considered for knee replacement surgery and is not presently ready to undergo this procedure, she has discussed the possibility of having surgery with her treating physician. He contended that appellant was at maximum medical improvement with regard to her knee condition since she declined surgery. Counsel contends that OWCP should remand the case to include the consequential conditions mentioned in the reports of Dr. Infante and Dr. Dinenberg.

Dr. Dinenberg discussed the possibility of total knee replacement surgery being beneficial to appellant but did not explicitly recommend that she undergo the procedure. While he noted that appellant was symptomatic from degenerative joint disease and patellofemoral arthritis, the medical adviser found that the August 10, 2011 x-ray showed an articular cartilage thickness of four millimeters, which was not sufficient to qualify for a separate impairment based on arthritis. While counsel contends that appellant was at maximum medical improvement from these conditions, this contradicted the opinion of Dr. Dinenberg, who did not believe that appellant was fixed or stable from these conditions. While Dr. Dinenberg noted that the statement of accepted facts listed the diagnoses of sprain of lateral collateral ligament and derangement of medial meniscus as accepted conditions, he opined that either the conditions did not exist initially or had resolved and found that appellant had no impairment from these conditions. Neither he nor Dr. Infante, appellant's treating physician, submitted an impairment rating which evaluated her accepted knee condition in conformance with the A.M.A., *Guides*.[18]

[17] *Id.* at 519.

[18] The Board notes that a description of appellant's impairment must be obtained from appellant's 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).

The reports of Drs. Dinenberg and Infante are of diminished probative weight as the physicians did not correlate their findings to the applicable protocols of the sixth edition of the A.M.A., *Guides*. The Board finds that Dr. Fritzhand provided the only report which included an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. OWCP properly granted a schedule award for a two percent impairment of the right leg based on his examination.

Appellant submitted no other medical evidence to establish greater than two percent impairment to her right leg. The Board will affirm the January 30, 2013 decision.

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 two percent impairment to her right leg.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board