United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 14-980**
	)	**Issued: August 25, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 25, 2014 appellant filed a timely appeal from a March 7, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied modification of a schedule award. 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.[2]

ISSUE

The issue is whether appellant has more than a two percent impairment of her left lower extremity, for which she received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On September 19, 2011 appellant, then a 52-year-old mail processor clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a left knee injury as a result of duties of her federal employment, including standing, bending, turning, picking up trays, walking back and forth around an automation machine and standing all day. OWCP accepted her claim for pain in the joint of the lower leg on January 5, 2012 and for a current tear of the medial meniscus of the left knee on February 27, 2012.

Appellant requested a schedule award on June 21, 2013. By letter dated July 1, 2013, OWCP requested an impairment determination calculated under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) from his attending physician, including a date of maximum medical improvement (MMI), the diagnosis upon which the impairment was based, and a detailed description of any permanent impairment of the same member or function which preexisted the injury. It noted that "this rating should be expressed in terms of percentage of loss of use of the affected member(s) or function of the body (not the body as a whole)."

In a report dated July 15, 2013, Dr. Robert Fink, a Board-certified orthopedist, noted that appellant stated that she had an initial work injury in her left knee on July 1, 2011. Appellant stated that she aggravated the same knee in another work-related injury on September 19, 2011 and that she did not have pain in the left knee prior to these incidents. She was treated in the emergency room and underwent a magnetic resonance imaging (MRI) scan of the left knee, which revealed a torn medial meniscus and underwent arthroscopic surgery on April 6, 2012. Dr. Fink stated that appellant was at MMI at the time of the report. He noted that she had continued residual pain and an antalgic gait. Dr. Fink diagnosed appellant with traumatic arthritis of the left knee and a torn medial meniscus of the left knee. He rated her impairment at 12 percent of the whole person, converting a 20 percent impairment rating of the left knee under Table 16-12 and Table 16-3 to a 12 percent rating of the whole person per Appendix A of the A.M.A., *Guides*.

On September 16, 2013 OWCP forwarded Dr. Fink's report along with all other medical evidence of record to a district medical adviser (DMA). On September 23, 2013 the DMA reviewed the medical evidence of record and reported that appellant reached MMI on October 6, 2012 which was six months after appellant's April 6, 2012 left knee arthroscopy, partial medial meniscectomy and chondroplasty of the medial femoral condyle. He recommended that Dr. Fink's impairment rating be disregarded, as he based his rating in part due to degenerative arthritis of the knee, whereas appellant's claim had only been accepted for a meniscal tear. The DMA stated that in order to award a 20 percent left lower extremity impairment rating, one must document a two-millimeter cartilage interval, but that no such documentation had been found. He noted that in the MRI scan report dated October 14, 2011, there is only a mention of a mild subchondral edema in the medial femoral condyle and the medial tibial plateau, with no mention of arthritis. Using Table 16-3 of the A.M.A., *Guides*, the DMA recommended a two percent impairment rating for a partial medial meniscectomy. He noted that there would be no change to the award with the use of the net adjustment formula.

On September 27, 2013 OWCP issued a schedule award for a two percent permanent impairment of the left lower extremity.

On October 17, 2013 appellant requested reconsideration of OWCP's September 27, 2013 decision.

With her request, appellant resubmitted a diagnostic report dated October 14, 2011 from Dr. Michael Bresler, a Board-certified radiologist, who examined the results of an MRI scan of appellant's left knee. Dr. Bresler noted an abnormal intrasubstance signal within the posterior body and posterior horn of the medial meniscus, consistent with myxoid degeneration, with more focal abnormal signal intensity with distortion of the meniscal morphology in the posterior horn of the medial meniscus adjacent to the meniscal root. He noted that the meniscal root itself was suspicious for a meniscal tear. The body of the meniscus was also mildly medially extruded. The lateral meniscus was normal in signal and morphology. Dr. Bresler stated that the anterior cruciate and posterior cruciate ligaments were intact, with a mild edema adjacent to the medial collateral ligament. He observed mild subchondral edema in the medial femoral condyle and medial tibial plateau, as well as thinning of the hyaline cartilage along the medial patellar facet with subtle underlying subchondral edema. Dr. Bresler noted no muscle atrophy or edema, with no large articular cartilage defects.

In a report dated November 23, 2013, Dr. Fink restated his report of July 15, 2013, adding the following under the "history" portion of his report: "This [MRI scan] demonstrated extensive degeneration of the posterior body and posterior horn of the medial meniscus. It also demonstrates thinning of the hyaline cartilage. This degeneration is consistent with a tear greater than two millimeters. Further, the degenerated condition of the meniscus is consistent with an arthritic condition." Dr. Fink restated his impairment rating of 12 percent of the whole person, converted from a left knee impairment rating of 20 percent.

On February 13, 2014 OWCP forwarded Dr. Fink's November 23, 2013 medical report along with all other medical evidence of record to a DMA. On February 17, 2014 the DMA reviewed the medical evidence of record. He noted that the reports of July 15 and November 23, 2013 were almost the same, and stated that, while Dr. Fink recommended a 20 percent impairment rating based on a two-millimeter cartilage interval, there was no new evidence submitted indicating that such a cartilage interval existed. As such, and as the MRI scan of October 14, 2011 did not mention arthritis, the DMA recommended that Dr. Fink's report be disregarded.

By decision dated March 7, 2014, OWCP reviewed the merits of appellant's claim and denied modification of the September 27, 2013 schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing federal regulations[4] set forth the number of weeks of compensation payable to employees sustaining permanent

[3] *Id*. at § 8107.

[4] 20 C.F.R. § 10.404.

impairment from loss or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[5] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[6] For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.[7] It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.[8]

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[9] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

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

Appellant's claim was accepted by OWCP for a tear of the medial meniscus of the left knee. She underwent a partial medial meniscectomy on April 6, 2012. On June 21, 2013 appellant claimed a schedule award. OWCP granted her a schedule award for two percent impairment to the left lower extremity on the basis of a partial medial meniscectomy.

In support of her claim for a schedule award, appellant submitted the July 15 and November 23, 2013 reports of Dr. Fink, who indicated that she had a 20 percent permanent impairment of the left lower extremity. Dr. Fink stated that she had reached MMI at the time of the report. He noted that appellant had continued residual pain and an antalgic gait. Dr. Fink diagnosed her with traumatic arthritis of the left knee and a torn medial meniscus of the left knee.

[5] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[6] *Id.*

[7] FECA Bulletin No. 09-03 (issued March 15, 2009).

[8] *See Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.a.3 (January 2010). This portion of OWCP's procedures provides that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

[9] A.M.A., *Guides* 494-531.

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

He rated appellant's impairment at 12 percent of the whole person, converting a 20 percent impairment rating of the left knee under Table 16-12 and Table 16-3 to a 12 percent rating of the whole percent per Appendix A of the A.M.A., *Guides*. In his November 23, 2013 report, Dr. Fink added, "This [MRI scan] demonstrated extensive degeneration of the posterior body and posterior horn of the medial meniscus. It also demonstrates thinning of the hyaline cartilage. This degeneration is consistent with a tear greater than two millimeters. Further, the degenerated condition of the meniscus is consistent with an arthritic condition." The Board notes that Table 16-3 indicates that the maximum rating for a partial medial or lateral meniscectomy, meniscal tear or meniscal repair is three percent.[11]

Dr. Fink based his impairment rating in part on the diagnosis of traumatic arthritis of the knee. The Board notes that appellant's claim has only been accepted for pain in the joint of the lower leg and a tear of the medial meniscus of the left knee, and Dr. Fink did not sufficiently explain how the accepted tear of the medial meniscus of the left knee or pain in the joint of the lower leg caused, aggravated, precipitated or exacerbated this condition. 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.[12] Dr. Fink referenced a left lower extremity impairment under the A.M.A., *Guides* but did not provide a reasoned explanation as to how any arthritic condition would be causally related to an accepted condition. Further, the medical evidence of record does not demonstrate that appellant had degenerative arthritis prior to the dates of injury. The diagnostic report relied upon by Dr. Fink for his diagnosis does not state an impression of arthritis, but rather of a number of other conditions. OWCP's medical adviser reviewed the matter and found no basis on which an impairment rating could be based on arthritis. As there is no evidence of record that appellant's arthritis preexisted the work injury, it cannot be included in the schedule award determination.[13]

Board precedent is well settled that when an attending physician's report gives an estimate of impairment but does not address how the estimate was based on the A.M.A., *Guides,* OWCP is correct to follow the advice of its medical adviser or consultant where he or she has properly applied the A.M.A., *Guides*.[14]

In reports dated September 23, 2013 and February 17, 2014, the DMA determined that appellant reached MMI on October 6, 2012 and had two percent impairment of the left lower extremity. He noted that Table 16-3 at page 509 of the A.M.A., *Guides* provided for two percent impairment for a partial medial meniscectomy. The DMA considered the net adjustment formula but concluded that it would not change the default impairment rating. He explained that appellant's claim had not been accepted for arthritis but only for a meniscal tear; that in order to award a 20 percent left lower extremity permanent impairment, one must document a two-millimeter cartilage interval, which was absent from the record; and that the MRI scan report of October 14, 2011 did not diagnose arthritis. The Board finds that the DMA's impairment rating

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

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

[13] *W.A.*, Docket No. 13-544 (issued July 2, 2013).

[14] *J.Q.*, 59 ECAB 366, 371 (2008); *Laura Heyen*, 57 ECAB 435, 439 (2006).

was consistent with the examination findings utilizing the A.M.A., *Guides*, and that the medical evidence established that appellant sustained no more than a two percent impairment of the left lower extremity.

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

CONCLUSION

The Board finds that appellant has not established that she has more than a two percent impairment of the left lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board