United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 13-754**
	)	**Issued: July 2, 2014**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, San Antonio, TX, 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
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 11, 2013 appellant filed a timely appeal from the December 13, 2012 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 met her burden of proof to establish that she has more than 10 percent permanent impairment of her right leg, for which she received a schedule award.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

OWCP accepted that on March 15, 2011 appellant, then a 40-year-old transportation security screener, sustained unspecified internal derangement of her right knee, sprain of her right knee and leg, contusion of her right knee and traumatic arthropathy of her right lower leg due to lifting a bag onto a conveyor belt. Appellant began performing limited-duty work for the employing establishment and received partial disability compensation on the daily rolls.

On September 14, 2011 Dr. Francisco J. Garcia, an attending Board-certified orthopedic surgeon, performed OWCP-authorized right leg surgery, including partial lateral meniscectomy, chondroplasty of the lateral femoral condyle with drilling of 1 by 1.5 centimeter lesion, chondroplasty without drilling of the patellofemoral joint and arthroscopic lateral retinacular release. Appellant stopped work on September 14, 2011 and received total disability compensation.

On May 21, 2012 appellant returned to her regular, full-time work for the employing establishment.

In a June 4, 2012 report, Dr. Garcia indicated that he performed an examination of appellant on that date. He noted that appellant had completed the postoperative rehabilitation from her September 14, 2011 right knee surgery and posited that she had reached maximum medical improvement as of June 4, 2012. Dr. Garcia stated that, under Table 16-3 (Knee Regional Grid) on page 511 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), appellant had the diagnosis-based condition of right primary knee joint arthritis (full-thickness articular cartilage defect) and therefore fell under the class 1 default value of a seven percent impairment. With respect to grade modifiers, applying Table 16-5 through Table 16-9 showed that appellant had a grade modifier 2 for Physical Examination (GMPE) (moderate lateral joint line pain with moderate crepitus); a grade modifier 2 for Clinical Studies (GMCS) (diagnoses confirmed by diagnostic testing and moderate pathology); and a grade modifier 1 for Functional History (GMFH) (slight antalgic gait, but no requirement of an assistive device). Dr. Garcia noted that application of the Net Adjustment Formula on page 521 meant that movement was warranted two places to the right of the class 1 default value on Table 16-3. Therefore, the diagnosis-based impairment rating for appellant's right knee arthritis yielded a nine percent impairment of the right knee.[2] In his June 4, 2012 report, Dr. Garcia further noted that appellant exhibited 105 degrees of flexion in her right knee and that, under Table 16-23 on page 549, she had a 10 percent impairment of her right leg due to loss of motion. He concluded that her final rating would be based on this motion deficit and found that the total permanent impairment of appellant's right knee was 10 percent.

[2] Dr. Garcia also calculated a two percent diagnosis-based impairment for appellant's right partial lateral meniscectomy, but determined that it was more appropriate to use her right knee arthritis for the diagnosis-based impairment rating calculation as this yielded a higher degree of impairment. He also noted that she did not have sensory or motor loss associated with her peripheral nerves and therefore did not have an impairment under Table 16-12 on pages 534 and 535. Moreover, appellant did not have impairment based on complex regional pain syndrome per Table 16-15 on page 541 or on amputation per Table 16-16 on page 542.

On July 31, 2012 appellant filed a claim for a schedule award due to her work injuries.

On August 20, 2012 Dr. Garcia stated that, upon examination on that date, appellant had full active range of motion of her right knee without instability.

In an October 10, 2012 report, Dr. Henry Mobley, a Board-certified internist serving as an OWCP medical adviser, stated that he had reviewed the June 4, 2012 report of Dr. Garcia and noted that appellant's date of maximum medical improvement was the date of Dr. Garcia's examination, *i.e.*, June 4, 2012. He indicated, "Dr. Garcia reports right knee injury [status post] arthroscopic partial lateral meniscectomy, no atrophy, no laxity, [range of motion] -5/105 degrees, no sensory deficits, no motor loss, moderate joint line tenderness with crepitus, slight antalgic gait and impairment of 10 percent [right lower extremity] based upon [range of motion] deficits." Dr. Mobley concluded that, based on Dr. Garcia's report and the standards of Table 16-23 on page 549 of the sixth edition of the A.M.A., *Guides*, appellant had a 10 percent permanent impairment of her right leg due to her 105 degrees of right knee flexion.[3]

In a December 13, 2012 decision, OWCP granted appellant a schedule award for 10 percent permanent impairment of her right leg. The award ran for 28.8 weeks from July 4, 2012 to January 21, 2013 and was based on the opinions of Dr. Garcia and Dr. Mobley.[4]

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] 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.[8]

[3] Dr. Mobley also stated, "Dr. Garcia reports -5 degrees extension deficit. However, in his report (August 20, 2012) he states the claimant has 'full active [range of motion].' I have accepted his 10 percent impairment figure."

[4] The record contains a November 28, 2012 document with the same language, but this document is unsigned and appears to represent a draft of the December 13, 2012 decision.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id*.

[8] *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.

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.[9] 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, grade modifier for physical examination and grade modifier for clinical studies. The Net Adjustment Formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10] 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.[11]

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that diagnosis-based impairment is "the primary method of calculation for the lower limb" and that most impairments are based on the diagnosis-based impairment where impairment class is determined by the diagnosis and specific criteria as adjusted by the grade modifiers for functional history, physical examination and clinical studies. Chapter 16 further provides:

> "Alternative approaches are also provided for calculating impairment for peripheral nerve deficits, complex regional pain syndrome, amputation and range of motion. Range of motion is primarily used as a physical examination adjustment factor and is only used to determine actual impairment values when it is not possible to otherwise define impairment."[12]

ANALYSIS

OWCP accepted that on March 15, 2011 appellant sustained unspecified internal derangement of her right knee, sprain of her right knee and leg, contusion of her right knee and traumatic arthropathy of her right lower leg. On September 14, 2011 Dr. Garcia, an attending Board-certified orthopedic surgeon, performed OWCP-authorized right leg surgery, including partial lateral meniscectomy, chondroplasty of the lateral femoral condyle with drilling of 1 by 1.5 centimeter lesion, chondroplasty without drilling of the patellofemoral joint and arthroscopic retinacular release.

In a December 13, 2012 decision, OWCP granted appellant a schedule award for 10 percent permanent impairment of her right leg. The award was based on the June 4, 2012 report of Dr. Garcia and the October 10, 2012 report of Dr. Mobley, a Board-certified internist serving as an OWCP medical adviser.

Dr. Garcia stated that, under Table 16-3 of the sixth edition of the A.M.A., *Guides*, appellant had the diagnosis-based condition of right primary knee joint arthritis (full-thickness

[9] *See* A.M.A., *Guides* (6th ed. 2009) 509-11.

[10] *Id.* at 515-22.

[11] *Id.* at 23-28.

[12] *Id.* at 497, 544-53.

articular cartilage defect) and therefore fell under the class 1 default value of a seven percent impairment. Appellant had a grade modifier 2 for physical examination; a grade modifier 2 for clinical studies; and a grade modifier 1 for functional history. Dr. Garcia noted that application of the Net Adjustment Formula meant that movement was warranted two places to the right of the class 1 default value on Table 16-3. Therefore, the diagnosis-based impairment rating for appellant's right knee arthritis yielded a nine percent impairment of the right knee. Dr. Garcia further noted that appellant exhibited 105 degrees of flexion in her right knee and that, under Table 16-23 of the A.M.A., *Guides* on page 549, she had 10 percent impairment of her right leg due to loss of knee motion. He concluded that appellant's final rating would be based on this motion deficit and found that the total permanent impairment of her right knee was 10 percent. In his October 10, 2012 report, Dr. Mobley followed Dr. Garcia's reasoning and also concluded that appellant had 10 percent impairment of her right leg due to loss of knee motion.

The Board finds that, as a diagnosis-based impairment rating was available to evaluate appellant's right leg impairment, but OWCP based her schedule award on the range of motion method for evaluating right leg impairment without adequately explaining use of this impairment rating method. As noted, above the sixth edition of the A.M.A., *Guides* provides that the diagnosis-based method of impairment rating is preferred for evaluating leg impairment and provides that calculating leg impairment using range of motion deficits, such as considering knee motion deficits under Table 16-23, should only be undertaken if no other approach is available for rating.[13] Therefore, the case will be remanded to OWCP for further consideration of this matter to include an explanation of whether it is appropriate to base appellant's right leg impairment on the range of motion rating method given the standards of the sixth edition of the A.M.A., *Guides.*[14] After carrying out the development directed by this decision of the Board, OWCP shall issue an appropriate decision regarding appellant's right leg impairment.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has more than 10 percent permanent impairment of her right leg, for which she received a schedule award.

[13] *See supra* note 12.

[14] On January 29, 2014 the Board requested a pleading from the Director of OWCP, posing various questions regarding the circumstances in which the range of motion rating method may be used for evaluating permanent impairment under the sixth edition of the A.M.A., *Guides.* A response was not received within the allotted period.

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 2, 2014
Washington, DC

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

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

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