United States Department of Labor
Employees' Compensation Appeals Board

E.M., Appellant	)	
	)	
and	)	**Docket No. 14-311**
	)	**Issued: July 8, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 20, 2013 appellant filed a timely appeal from the June 14, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which awarded additional compensation. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.[2]

ISSUE

The issue is whether appellant has more than a 23 percent impairment of her right lower extremity.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). The Board therefore has no jurisdiction to review medical evidence dated August 14, 2013, which appellant submits on appeal.

FACTUAL HISTORY

On June 28, 2004 appellant, then a 46-year-old clerk (sales associate), filed an occupational disease claim alleging that her plantar fibromas were a result of spending at least eight hours a day on her feet at work. OWCP accepted her claim for bilateral plantar fasciitis fibromas and authorized surgery. It also accepted appellant's claim for bilateral tibialis tendinitis.

OWCP granted appellant schedule awards for a 15 percent impairment to each lower extremity.

OWCP later expanded its acceptance to include a left medial meniscus tear. In 2011, it awarded an additional 9 percent impairment for the left lower extremity, for a total impairment of 24 percent.

OWCP also expanded its acceptance to include right medial meniscus tear and aggravation of preexisting chondromalacia patella. It would later make clear that it was accepting bilateral chondromalacia patellae.

Appellant filed a claim for an additional schedule award. Dr. Christopher B. Ryan, the attending Board-certified physiatrist, evaluated her impairment on November 12, 2012. He noted that since he last saw appellant OWCP had accepted a meniscal injury and aggravation of patellofemoral arthritis in the right knee. Appellant further noted debridement of the medial and lateral menisci on the right as well as a patellar chondroplasty.

Dr. Ryan described his findings on examination, including some soft tissue swelling, some atrophy in the quadriceps on the right, more than the left. Range of motion, performed three times with a goniometer, showed 10 degrees of extension lag and 90 degrees of full flexion. Dr. Ryan found that appellant had reached maximum medical improvement.

Dr. Ryan's primary diagnosis was patellofemoral arthritis. Referencing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), he found that appellant's default impairment rating was three percent for a class 1 or mild problem.[3] Dr. Ryan adjusted this to four percent based on moderate range of motion findings.[4] He noted that appellant's lower extremity questionnaire indicated a class 3 or severe problem, which was assumed to be unreliable and therefore excluded from the grading process.[5]

[3] A.M.A., *Guides* 511 (Table 16-3).

[4] *Id*. at 549 (Table 16-23) and 517 (Table 16-7).

[5] *Id*. at 516.

Dr. Ryan also diagnosed primary knee joint arthritis. He found a default impairment rating of seven percent for a class 1 or mild problem.[6] Dr. Ryan adjusted this by one percent for moderate range of motion findings.[7]

Dr. Ryan noted that appellant had partial medial and lateral meniscectomies. He found a default impairment rating of 10 percent for partial medial and lateral meniscectomy.[8] Moderate range of motion findings adjusted this to 12 percent.

Using range of motion as a standalone method of evaluating impairment, Dr. Ryan found a 30 percent impairment of appellant's right lower extremity.[9] "Clearly, as the sixth edition of the A.M.A., *Guides* deems a 10-degree extension lag to be such a significant impairment and it is functionally so, then it makes the most sense to utilize this method to rate her lower extremity." Dr. Ryan concluded that appellant had a 30 percent impairment of her right lower extremity attributable to her knee.

OWCP's medical adviser reviewed Dr. Ryan's impairment evaluation. He explained that under the A.M.A., *Guides* impairment based on range of motion was permissible only if no other approach was available for the rating. Otherwise, range of motion was used as a physical examination adjustment factor. Further, appellant had demonstrated normal range of motion twice since her surgery and so her significant deficits on Dr. Ryan's examination were inconsistent with her documented best efforts and therefore not reliable.

OWCP's medical adviser noted that the examiner should use the diagnosis with the highest impairment rating in that region that is causally related, which was the diagnosis of partial medial and lateral meniscectomy, with its default impairment value of 10 percent. He adjusted this down to 8 percent based on her normal functional history. The medical adviser concluded that appellant had an eight percent impairment of her right lower extremity due to her knee.

On June 14, 2013 OWCP issued a schedule award for an additional 8 percent impairment of appellant's right lower extremity, for a total impairment of 23 percent.

LEGAL PRECEDENT

The schedule award provision of FECA[10] and the implementing regulations[11] 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. FECA, however, does not

[6] *Supra* note 3.

[7] *Supra* note 4.

[8] *Id*. at 509.

[9] *Id*. at 549 (Table 16-23).

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404.

specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.[12]

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. OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[13] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[14]

ANALYSIS

Diagnosis-based impairment is the primary method of evaluating the lower limb. Impairment is determined first by identifying the relevant diagnosis and then by selecting the class of the impairment: no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss. This will provide a default impairment rating. The evaluator may then adjust the default rating up or down slightly for grade, which is determined by such grade modifiers or nonkey factors as functional history, physical examination and clinical studies.[15]

Dr. Ryan, the evaluating physiatrist, found that appellant had a 30 percent impairment of her right lower extremity due to loss of knee motion. OWCP's medical adviser correctly noted that range of motion is used to determine actual impairment values only when it is not possible to otherwise define impairment.[16]

Diagnosis-based impairment is the method of choice for evaluating impairment under the sixth edition of the A.M.A., *Guides*. In most cases, only one diagnosis in a region, such as the knee, will be appropriate. If a patient has two significant diagnoses, the examiner should use the diagnosis with the highest impairment rating in that region that is causally related for the impairment calculation.[17]

Dr. Ryan's primary diagnosis was patellofemoral arthritis, with a rating from one to five percent, depending on adjustments. Appellant also had primary knee arthritis, with a rating of

[12] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

[13] *Supra* note 11; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

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

[16] *Id*. at 497, 552 (step 12). As a point of clarification, knee extension lag and flexion contracture are different concepts. *Id*. at 544. Dr. Ryan found 10 degrees of extension lag. Table 16-23, page 549, defines knee motion impairment in terms of flexion and flexion contracture, not extension lag. He mistakenly treated the two concepts the same.

[17] *Id*. at 497, 499, 529.

five to nine percent. It was her diagnosis of partial medial and lateral meniscectomy, with its range of 7 to 13 percent that offered the highest impairment rating in that region.

Table 16-3, page 509, shows a default impairment rating of 10 percent for a class 1 or mild problem. Dr. Ryan found that appellant's lower extremity questionnaire, showing a class 3 or severe problem, was unreliable. According to the A.M.A., *Guides*: "If the functional history is determined to be unreliable or inconsistent with other documentation, it is excluded from the grading process."[18] Thus, rather than grade appellant's functional history as normal, the modifier is disregarded altogether in the grading adjustment.[19]

On physical examination, Dr. Ryan found some soft tissue swelling and some (unmeasured) atrophy in the quadriceps on the right, more than the left. OWCP's medical adviser found this consistent with mild examination findings, which do not warrant an adjustment to the default impairment value. In addition to the medical adviser's observation that appellant had previously demonstrated normal range of motion after surgery, the Board notes that 90 degrees of flexion (and no flexion contracture) amounts to a mild impairment under Table 16-23, page 549, and therefore warrants no adjustment to the default impairment value even if the range of motion findings were reliable.

Because clinical studies were used to establish the diagnosis and default impairment value, they may not be used again in the impairment calculation to adjust the default value.[20]

Accordingly, appellant's right lower extremity impairment due to the knee remains 10 percent. Combined with the 15 percent impairment previously awarded for different regions, appellant has a 24 percent total impairment of the right lower extremity.[21] The Board finds, therefore, that she is entitled to an additional schedule award of nine percent, rather than the net eight percent awarded on June 14, 2013.

CONCLUSION

The Board finds that appellant has a 24 percent total impairment of her right lower extremity, entitling her to an additional schedule award of 9 percent, not 8 percent as previously awarded.

[18] *Id*. at 516.

[19] *Id*.

[20] *Id*. at 515-16.

[21] *Id*. at 604 (Combined Values Chart).

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed as modified and the case remanded for further action consistent with this opinion.

Issued: July 8, 2014
Washington, DC

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

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

James A. Haynes, Alternate Judge
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