

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
B.W., Appellant)	
)	
and)	Docket No. 14-69
)	Issued: March 18, 2014
U.S. POSTAL SERVICE, POST OFFICE,)	
St. Louis, MO, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 2, 2013 appellant filed a timely appeal from the September 12, 2013 Office of Workers' Compensation Programs' (OWCP) decision denying her request for an increased schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this issue.

ISSUE

The issue is whether appellant met her burden of proof to establish that he sustained more than a two percent permanent impairment to her left lower extremity, for which she received a schedule award.

FACTUAL HISTORY

On August 30, 2012 appellant, then a 51-year-old rural carrier, injured her left knee in the performance of duty. She filed a claim for benefits, which OWCP accepted for left knee sprain.

¹ 5 U.S.C. § 8101 *et seq.*

OWCP expanded the claim to include exacerbation of medial meniscus tear on the left. Appellant underwent an authorized left knee arthroscopy, partial medial meniscectomy and chondroplasty microfracture of the medial femoral condyle on November 2, 2012. She returned to full duty on December 1, 2012.

In a report dated February 25, 2013, Dr. Randall D. Roush, a Board-certified orthopedic surgeon and treating physician, noted that appellant was seen for her left knee. He advised that she was still having pain and could not extend the leg which caused her to limp and tip-toe on left side when going down hills (front lawns). Dr. Roush recommended anti-inflammatories and possible cortisone injection and to return as necessary.

In a Form CA-7 dated February 27, 2013, appellant requested a schedule award.

In a letter dated April 1, 2013, OWCP advised appellant that additional medical evidence was required to make a proper determination regarding any possible permanent impairment.

In a May 28, 2013 report, Dr. Roush noted that he was providing a final rating. He indicated that appellant had a complex tear of the medial meniscus and a leaking Baker's cyst. Dr. Roush explained that she underwent arthroscopic knee surgery with partial medial meniscectomy, chondroplasty and microfracture of medial femoral condyle. He advised that appellant made a gradual recovery but she reported that, during the process of delivering mail, she sometimes had a limp and difficulty with full extension of the knee. There were no complaints of locking or giving way. Dr. Roush opined that appellant had reached maximum medical improvement. He referred to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (*hereinafter*, A.M.A., *Guides*) and indicated that, pursuant to Table 16-3,² she had five percent impairment of the left lower extremity for a combined meniscal injury and chondral lesion of the femoral condyle.

In a September 2, 2013 report, OWCP's medical adviser noted appellant's history of injury and treatment and referred to the A.M.A., *Guides*. He noted that Dr. Roush indicated that appellant did well following her arthroscopy but occasionally walked with a limp. The medical adviser also indicated that appellant had pain with full extension and there was no knee effusion. Dr. Roush's notes reported that all surgical incisions were healed, the knee was stable to anterior and posterior stress testing and the McMurray's test was negative. The medical adviser advised that Dr. Roush provided a rating of five percent for both the medial femoral condylar lesion and the meniscus tear. He explained that only the most clinically relevant condition was to be rated, which in appellant's case was the meniscal tear. The medical adviser referred to Table 16-3³ and determined that she had two percent impairment for a partial medial meniscectomy. Dr. Roush considered the net adjustment formula and opined that there would be no change to the rating. OWCP's medical adviser indicated that appellant reached maximum medical improvement on February 25, 2013.

² A.M.A., *Guides* 509.

³ *Id.*

By decision dated September 12, 2013, OWCP granted appellant a schedule award for two percent permanent impairment of the left leg. The award covered 5.76 weeks, from February 25 to April 6, 2013.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing regulations⁵ 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. For decisions issued after May 1, 2009, the A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

In addressing lower extremity impairments, 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).⁷ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁸

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.⁹

ANALYSIS

OWCP accepted that appellant sustained left knee sprain. It expanded the claim to include exacerbation of medial meniscus tear on the left. Appellant underwent left knee arthroscopy, partial medial meniscectomy and chondroplasty microfracture of the medial femoral condyle on November 2, 2012.

In support of her claim for a schedule award, appellant submitted a May 28, 2013 report from Dr. Roush, who indicated that she had a five percent permanent impairment. Dr. Roush noted that appellant had a complex tear of the medial meniscus and a leaking Baker's cyst and that she underwent arthroscopic knee surgery with partial medial meniscectomy, chondroplasty

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009). A.M.A., *Guides* (6th ed. 2008).

⁷ A.M.A., *Guides* 494-531; see *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

⁸ *Id.* at 521.

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

and microfracture of medial femoral condyle. He stated that appellant sometimes had a limp and difficulty with full extension of the knee. Dr. Roush opined that she had reached maximum medical improvement. He utilized the A.M.A., *Guides* and referred to Table 16-3.¹⁰ Dr. Roush indicated that appellant had five percent impairment of the extremity for a combined meniscal injury and chondral lesion of the femoral condyle. The Board notes that this Table indicates that the maximum rating for a partial medial or lateral meniscectomy, meniscal tear or meniscal repair is three percent. There also is no provision for five percent impairment on page 509 for a chondral lesion of the femoral condyle. A medical opinion is of limited probative value if it contains a conclusion unsupported by medical rationale.¹¹

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*.¹²

In a report dated September 2, 2013, OWCP's medical adviser determined that appellant reached maximum medical improvement on February 25, 2013 and had two percent impairment of the left leg. He noted that Table 16-3 at page 509 of the A.M.A., *Guides*, provided for two percent leg impairment for a partial medial meniscectomy. Dr. Roush considered grade modifiers and the net adjustment formula but concluded that the net adjustment formula would not change the default impairment rating. The medical adviser explained that, while he provided a rating of five percent for both the medial femoral condylar lesion and the meniscus tear, only the most clinically relevant condition was to be rated, which in appellant's case was the meniscal tear. The Board notes that this is in accord with the A.M.A., *Guides*, which provides that, if more than one diagnosis can be used in a region, the one that provides the most clinically accurate impairment rating should be used.¹³ There is no current medical report of record establishing any greater impairment pursuant to the A.M.A., *Guides*.

On appeal, appellant argued that she should have received a greater impairment based upon her physician's findings. However, as noted above, Dr. Roush's report did not comport with the A.M.A., *Guides*.

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 not met her burden of proof to establish that she has more than two percent impairment of the left lower extremity.

¹⁰ *Supra* note 2.

¹¹ *T.M.*, Docket No. 08-975 (February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² *J.Q.*, 59 ECAB 366 (2008); *Laura Heyen*, 57 ECAB 435 (2006).

¹³ A.M.A., *Guides* 499.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board