

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

Y.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Washington, DC, Employer)

Docket No. 14-1031
Issued: October 28, 2014

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 1, 2014 appellant filed a timely appeal of a January 14, 2014 Office of Workers' Compensation Programs' (OWCP) merit decision denying an additional 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 to consider the merits of the case.

ISSUE

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

FACTUAL HISTORY

On July 21, 1997 appellant, then a 29-year-old letter carrier, filed a traumatic injury claim alleging that she developed right leg pain while descending stairs in the performance of duty on July 9, 1997. OWCP accepted her claim for right knee sprain on October 22, 1997. Appellant underwent an arthroscopy of the right knee with lateral release right patella, laser ablation, partial

¹ 5 U.S.C. § 8101 *et seq.*

lateral meniscectomy, shaving right patella, debridement and partial synovectomy. She returned to light-duty work on April 10, 1999.² By decision dated June 21, 2000, OWCP granted appellant a schedule award for seven percent impairment of her right lower extremity.

An x-ray report dated June 9, 2004 demonstrated no evidence of loose bodies and showed that the medial and lateral joint spaces were preserved. Appellant exhibited subchondral sclerosis along the femoral surface of the patella. In a decision dated September 23, 2005, OWCP accepted that she sustained a recurrence of disability on July 19, 2005. Appellant underwent a right knee magnetic resonance imaging (MRI) scan on August 2, 2005 which did not demonstrate a ligamentous or cartilaginous injury.

OWCP accepted the additional condition of right knee traumatic arthritis on April 4, 2011. Appellant underwent an MRI scan on April 7, 2011 which was determined to be normal. In a report dated March 7, 2012, appellant's attending physician, Dr. Rida N. Azer, a Board-certified orthopedic surgeon, opined that appellant had reached maximum medical improvement. He noted appellant's surgery and diagnosed traumatic arthritis with crepitus on knee flexion, extension and patellofemoral compression as well as synovial thickening. Dr. Azer stated that x-rays showed patellofemoral traumatic arthritic changes and medial and lateral compartmental changes. He opined that appellant had 40 percent impairment of his right lower extremity.

On August 29, 2012 OWCP requested that OWCP's medical adviser review appellant's claim for schedule award purposes. OWCP's medical adviser noted that Dr. Azer did not provide citations to the A.M.A., *Guides* in support of his impairment rating and that appellant's MRI scan was normal. He stated that joint space measurements were necessary to determine a permanent impairment due to arthritis.

In a note dated December 19, 2012, Dr. Azer stated that appellant had pain in the right knee and crepitus with knee flexion, extension and patellofemoral compression. He found synovial thickening but no effusion. Dr. Azer stated that x-rays demonstrated subchondral sclerosis over the femoral surface of the patella with narrowing of the medial joint space on weight bearing view.

In a decision dated January 11, 2013, OWCP denied appellant's claim for an additional schedule award.

Appellant requested reconsideration on June 24, 2013. In a report dated March 20, 2013, Dr. Azer stated that appellant had pain in her right knee with crepitus on flexion and extension and on patellofemoral compression. He stated that appellant was tender over the medial joint line and that she had weakness of the right quadriceps. Dr. Azer stated that x-rays of the right knee with patellar views and weight bearing views showed narrowing of the medial and lateral joint spaces. He reported that the patellofemoral joint space was narrowed to zero with subchondral sclerosis and osteophytes. Dr. Azer stated that based on the sixth edition of the A.M.A., *Guides* appellant had 40 percent impairment based on Table 16-2, Table 16-3, Table 16-5, Table 16-6, 1-10 and Table 16-8.

² Appellant filed a recurrence of disability claim on August 13, 2010 alleging ongoing symptoms related to her July 9, 1997 employment injury. OWCP denied this claim by decision dated October 25, 2010. By decision dated March 31, 2011, OWCP's hearing representative affirmed OWCP's October 25, 2010 decision.

OWCP's medical adviser reviewed Dr. Azer's report on September 12, 2013. He stated that medial and lateral joint space measurements were not given and an objective basis for the impairment could not be confirmed. The medical adviser noted that Dr. Azer found that appellant had no cartilage interval in the patellofemoral joint which would be a 20 percent impairment of the right lower extremity.³ He stated that appellant had an additional 13 percent impairment of the right lower extremity. The medical adviser further recommended that a second opinion evaluation be obtained to be sure that a fair lower extremity impairment rating was given.

OWCP referred appellant for a second opinion evaluation on October 30, 2013. Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, performed a second opinion examination on behalf of OWCP on November 18, 2013. He noted that appellant reported symptomatology of swelling and stiffness with occasional buckling in her right knee. Dr. Hanley stated that appellant had joint space narrowing, but noted that there was no quantification of appellant's joint space. On physical examination, he found that appellant walked with a minimal limp and exhibited full range of motion of her right knee. Dr. Hanley found intact ligaments, no atrophy of the thigh and minimal crepitus of the patella. He noted that appellant's MRI scan was normal. Dr. Hanley found that appellant had reached maximum medical improvement. He diagnosed history of knee sprain on the right, possible lateral meniscus tear surgically treated and history of chondromalacia of the patella. Dr. Hanley applied the A.M.A., *Guides* and stated that the accepted condition could utilize any of three different criteria. He found that appellant's condition should be classified as a partial medial or lateral meniscectomy with an impairment rating of two percent. Dr. Hanley stated that he could not provide a rating for a sprain with the development of joint space narrowing or patellofemoral arthritis as he was not provided with a joint space interval. He concluded that the most reasonable criteria would be a meniscal injury, with grade modifiers of 1 for functional history and physical examination as well as grade modifier 0 for a normal MRI scan examination in clinical studies. Dr. Hanley found that application of the formula under the A.M.A., *Guides* resulted in a negative grade modifier for grade B under class 1, two percent impairment of the right lower extremity.⁴

OWCP's medical adviser reviewed Dr. Hanley's report on December 22, 2013 and concurred with his findings. He reported that patellofemoral arthritis was noted by Dr. Hanley, but that he did not have any joint space measurements to allow an accurate impairment rating based on this problem.

By decision dated January 14, 2014, OWCP denied modification of its prior decision finding that the medical evidence did not establish more than seven percent impairment of appellant's right lower extremity for which she had already received a schedule award.

³ A.M.A., *Guides* 511, Table 16-3.

⁴ *Id.* at 509, Table 16-3.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulations⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁷ 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). The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁸

ANALYSIS

OWCP accepted that appellant sustained a right knee sprain, right knee with traumatic arthritis and was treated with an arthroscopy of the right knee with lateral release right patella, laser ablation, partial lateral meniscectomy, shaving right patella, debridement and partial synovectomy. Appellant's attending physician, Dr. Azer opined that appellant had no patellofemoral joint interval due to arthritis. He further stated that x-rays demonstrated subchondral sclerosis over the femoral surface of the patella with narrowing of the medial and lateral joint spaces. OWCP's medical adviser noted that Dr. Azer did not provide the necessary cartilage intervals in millimeters to determine appellant's impairment due to knee arthritis in the medial and lateral joints. With regard to the absence of a cartilage interval in the patellofemoral joint, the medical adviser concluded based on Dr. Azer's reports that appellant had 20 percent impairment, which is the equivalent of a class 2 default grade C impairment.⁹ The medical adviser further recommended a second opinion evaluation to determine the full extent of appellant's permanent impairment.

OWCP referred appellant to Dr. Hanley for a second opinion evaluation to determine the extent of the permanent impairment of her right knee. Dr. Hanley stated that he was unable to determine the procedures performed during appellant's 1997 arthroscopy. He was also unable to determine appellant's cartilage intervals based on the evidence of record. On physical examination, Dr. Hanley found that appellant walked with a minimal limp and exhibited full range

⁵ 5 U.S.C. §§ 8101-8193, 8107.

⁶ 20 C.F.R. § 10.404.

⁷ For new decisions issued after May 1, 2009, OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* 521. *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

⁹ *Id.* at 511, Table 16-3.

of motion of her right knee. He found intact ligaments, no atrophy of the thigh and minimal crepitus of the patella. Dr. Hanley noted that appellant's MRI scan was normal. He found that appellant had reached maximum medical improvement. Dr. Hanley applied the A.M.A., *Guides* and found that appellant's condition should be classified as a partial meniscectomy with a default impairment rating of two percent. He applied the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) to reach (1-1) + (1-1) + (0-1) or -1 and found that appellant had a grade B or two percent impairment due to a partial meniscectomy. OWCP's medical adviser reviewed Dr. Hanley's report on December 22, 2013 and concurred with his findings. The Board finds that appellant has no more than seven percent impairment of her right lower extremity for which she has received a schedule award.

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 no more than seven percent impairment of her right lower extremity for which she has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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