United States Department of Labor
Employees' Compensation Appeals Board

W.S., Appellant	)	
and	)	**Docket No. 14-1184**
	)	**Issued: January 8, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Akron, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On April 28, 2014 appellant filed a timely appeal from a March 19, 2014 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 has established greater than 50 percent impairment of the right lower extremity for which she received a schedule award.

FACTUAL HISTORY

OWCP accepted chondromalacia of the right patella and a right medial meniscal tear sustained on June 29, 1999 when a cart struck appellant, then a 61-year-old mail processing clerk, on her right knee. On December 14, 2000 Dr. John L. Pinkowski, an attending Board-

[1] 5 U.S.C. § 8101 *et seq.*

certified orthopedic surgeon, performed right knee arthroscopy, with chondroplasty of the lateral compartment, partial lateral meniscectomy, and removal of a bone spur. He continued to follow appellant through July 2001. Dr. Pinkowski administered viscosupplementation injections.[2]

In an April 18, 2002 report, Dr. Paul A. Steurer, an attending Board-certified orthopedic surgeon, noted that x-rays of the right knee showed chondromalacia of the patella and medial joint space narrowing at the meniscectomy site.

On December 20, 2002 appellant claimed a schedule award.[3] In a February 17, 2003 report, an OWCP medical adviser found that, based on a review of the medical reports of Dr. Pinkowski and Dr. Steurer, as well as a statement of accepted facts, appellant had seven percent impairment of the right lower extremity due to status post meniscal resection and patellofemoral chondrosis, according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*) then in effect. By decision issued March 10, 2003, OWCP granted appellant a schedule award for seven percent impairment of the right leg. The period of the award ran from April 18 to September 6, 2002.

Dr. Pinkowski continued to treat appellant for right knee arthritis from February 2003 through October 2008. He noted continued pain and limited flexion. Dr. Pinkowski administered periodic viscosupplementation injections, authorized by OWCP.

On October 8, 2008 appellant requested an increased schedule award. She submitted a January 8, 2009 report from Dr. Steurer opining that appellant had greater than seven percent impairment of the right lower extremity according to the fifth edition of the A.M.A., *Guides*, due to weakness, valgus deformity, and status post partial meniscectomy. Dr. Pinkowski stated on January 8, 2009 that appellant had occupationally-related arthritis of the right knee, with limited flexion. He administered corticosteroid injections.

In a February 4, 2009 report, an OWCP medical adviser opined that appellant had 50 percent impairment of the right leg according to the fifth edition of the A.M.A., *Guides* then in effect, due to reduced cartilage interval of the right knee, weakness, partial meniscectomy, and valgus deformity.

By decision dated February 12, 2009, OWCP granted appellant a schedule award for 50 percent impairment of the right lower extremity. It noted that she would be paid an additional 43 percent as she had already received a schedule award for seven percent impairment of the right leg. The period of the award ran from September 7, 2002 to January 20, 2005.

From January 2010 to December 10, 2012, Dr. Pinkowski continued to administer viscosupplementation injections to treat appellant's right knee arthritis. He obtained January 14,

[2] Appellant participated in physical therapy from 1999 through 2003.

[3] OWCP had previously issued a May 8, 2002 decision denying a schedule award for right lower extremity impairment based on a lack of medical evidence demonstrating a permanent impairment.

2010 x-rays showing narrowing of the tibiofemoral and patellofemoral joints with osteophytic spurring.

On July 12, 2013 appellant claimed an additional schedule award. OWCP expanded the claim to include osteoarthritis of the right knee, and requested that Dr. Steurer submit an updated impairment rating including arthritis as an accepted condition. In response, Dr. Steurer submitted a December 19, 2013 report, reviewing appellant's history of injury and treatment. On examination of the right knee, he found an increased varus deformity, loss of 10 degrees extension, flexion limited to 100 degrees, and tenderness to palpation throughout the knee. Dr. Steurer obtained x-rays showing "severe arthritis with complete loss of cartilage space in the lateral compartment," and arthritis in the patellofemoral joint. He diagnosed chondromalacia of the right patella, status post surgery for meniscal tear, and osteoarthritis of the right knee. Dr. Steurer opined that appellant had attained maximum medical improvement. Referring to Table 16-3, page 511 of the sixth edition of the A.M.A., *Guides*,[4] he found 50 percent impairment of the right leg due to a Class of Diagnosis (CDX) estimate for class 1 primary arthritis of the right knee, as imaging studies revealed a complete loss of joint space with an interval of zero millimeters. Dr. Steurer assessed an additional three percent impairment for patellofemoral arthritis according to Table 16-3, adding the two impairments to equal a total 53 percent impairment of the right lower extremity.

On February 6, 2014 OWCP requested that an OWCP medical adviser review the medical record and updated statement of accepted facts, and submit an impairment rating for the right lower extremity. In response, the medical adviser submitted a February 7, 2014 report, concurring that appellant had reached maximum medical improvement as of Dr. Steurer's December 19, 2013 examination. He also concurred with Dr. Steurer's use of the diagnosis-based rating method under Table 16-3. The medical adviser assigned a class 4 CDX due to a joint space of zero millimeters. He assigned a grade modifier for Functional History (GMFH) of 1 for ongoing knee symptoms, and a grade modifier for findings on Physical Examination (GMPE) of 5 for increased varus deformity and tenderness to palpation reflecting severe underlying pathology. The medical adviser noted that a grade modifier for Clinical Studies (GMCS) was not applicable as imaging studies were already considered in assigning the CDX and should not be repeated in the rating scheme. Applying the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX),[5] or (1-4) + (5-4) resulted in a net adjustment of -2, moving the default grade of C two steps to the left, to grade A. The medical adviser found that appellant therefore had a 50 percent impairment of the right lower extremity according to Table 16-3.

By decision dated March 19, 2014, OWCP denied appellant's claim for an additional schedule award as the medical evidence did not support more than 50 percent impairment of the right leg, for which she had previously received schedule awards. It found that the weight of the medical evidence rested with the medical adviser, who applied the appropriate criteria of the A.M.A., *Guides* to Dr. Steurer's findings.

[4] A.M.A., *Guides* 509-11, Table 16-3, of the sixth edition is entitled "Knee Regional Grid -- Lower Extremity Impairments."

[5] The net adjustment formula is set forth at page 521 of the sixth edition of the A.M.A., *Guides.*

LEGAL PRECEDENT

The schedule award provisions of FECA[6] provide for compensation to employees sustaining impairment from loss or loss of use of specified members 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 mater which rests in the sound 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. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[7] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[8] Under the sixth edition, the evaluator identifies the impairment of the class of diagnosis, which is then adjusted by grade modifiers based on functional history, physical evidence, and clinical studies.[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 an OWCP medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides.*[10] In some instances, an OWCP medical adviser's opinion can constitute the weight of the medical evidence. This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*. In this instance, a detailed opinion by an OWCP medical adviser which gives a percentage based on reported findings and the A.M.A., *Guides* may constitute the weight of the medical evidence.[11]

ANALYSIS

OWCP accepted that appellant sustained a right medial meniscal tear and chondromalacia of the patella due to a June 29, 1999 traumatic right knee injury. Appellant underwent partial lateral meniscectomy on December 14, 2000. On March 10, 2003 OWCP issued a schedule

[6] 5 U.S.C. § 8107.

[7] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[8] A.M.A., *Guides* 3, (6th ed. 2008) Section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[9] A.M.A., *Guides* 494-531 (6th ed. 2008).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013); *see also L.R.*, Docket No. 14-674 (issued August 13, 2014); *D.H.*, Docket No. 12-1857 (issued February 26, 2013).

[11] *See* Federal (FECA) Procedure Manual, *id.* at Chapter 2.810.8(j) (September 2010).

award for seven percent impairment of the right lower extremity, based on the clinical findings of Drs. Steurer and Pinkowski, attending Board-certified orthopedic surgeons, as reviewed by an OWCP medical adviser. OWCP issued an augmented schedule award on February 12, 2009 for an additional 43 percent impairment of the right leg due to weakness, valgus deformity, and status post partial meniscectomy.

Appellant claimed an additional schedule award on July 12, 2013. OWCP expanded the claim to include osteoarthritis of the right knee, and sought an updated impairment rating from Dr. Steurer who provided a December 19, 2013 impairment rating finding a 53 percent impairment of the right lower extremity according to Table 16-3 of the A.M.A., *Guides*, 50 percent for primary arthritis of the right knee with total loss of the joint space in the lateral compartment, and three percent for patellofemoral arthritis. Dr. Steurer did not apply the net adjustment formula to his clinical findings or discuss the applicability of any grade modifiers.[12] OWCP then referred the medical record and a statement of accepted facts to an OWCP medical adviser for review. In a February 7, 2014 report, an OWCP medical adviser reviewed Dr. Steurer's impairment rating and concurred his use of a diagnosis-based rating method under Table 16-4. He noted, however, that Dr. Steurer did not properly apply the A.M.A., *Guides*, as he did not perform grade modifier calculations or explain why it would be inappropriate to apply grade modifiers. The medical adviser applied the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (1-4) + (5-4), to obtain a net adjustment of -2, moving the default grade of C two steps to the left, to grade A. He found a 50 percent impairment of the right lower extremity according to Table 16-3 due to class 4, grade A arthritis of the right knee.

As Dr. Steurer did not properly apply the rating criteria of the A.M.A., *Guides*, OWCP properly relied on the medical adviser's February 7, 2014 report. The medical adviser applied the appropriate sections of the sixth edition of the A.M.A., *Guides* to Dr. Steurer's clinical findings. He found a 50 percent impairment of the right lower extremity due to arthritis. The medical adviser calculated and applied grade modifiers for functional history and physical findings, and explained why the grade modifier for clinical studies was superseded by the consideration of imaging studies in the diagnosis-based rating element. He provided a detailed discussion of how each element of the rating scheme related to the clinical findings observed by appellant's physicians.

The Board finds that OWCP properly relied on OWCP medical adviser's February 7, 2014 impairment rating. The medical adviser properly applied the appropriate portions of the A.M.A., *Guides* to Dr. Steurer's clinical findings.[13] He provided detailed explanations and calculations for each rating element. Therefore, OWCP's March 19, 2014 decision affirming the February 12, 2009 schedule award finding a 50 percent impairment of the right lower extremity was proper under the facts and circumstances of this case. There is no probative medical evidence establishing a greater percentage of impairment.

[12] Dr. Steurer also combined two diagnosis-based estimates in the same region, the knee. However, the A.M.A., *Guides*, provides that, where more than one diagnosis in a region can be used, the one that provides the most clinically accurate impairment rating should be used. *See* A.M.A., *Guides* 499. Dr. Steurer did not explain how his rating remained accurate in view of this prohibition in the A.M.A., *Guides*.

[13] *See supra* note 11.

On appeal, appellant contends that her right knee condition remains active and disabling. She describes symptoms of pain and stiffness interfering with activities of daily living. As stated above, OWCP's determination of a 50 percent impairment of the right lower extremity was based on an OWCP medical adviser's correct application of the A.M.A., *Guides* to the findings provided by appellant's physicians.

Appellant may request a schedule award or increased schedule award regarding the right lower extremity at any time, 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 established that she sustained more than a 50 percent impairment of the right lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board