United States Department of Labor
Employees' Compensation Appeals Board

P.H., Appellant	)	
	)	**Docket No. 16-1626**
and	)	**Issued: January 12, 2017**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Baltimore, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 10, 2016 appellant, through counsel, filed a timely appeal from a May 20, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish more than three percent permanent impairment of her right lower extremity for which she received a schedule award.

FACTUAL HISTORY

On May 30, 2014 appellant, then a 58-year-old mail handler, sprained her right knee when she tripped over a damaged floor mat at work. OWCP accepted her claim for right knee lateral collateral ligament sprain.

Dr. John C. Gordon, a Board-certified orthopedic surgeon, examined appellant on June 11, 2014 and noted that she had sprained her right knee about 10 days earlier. He reviewed x-rays and found tricompartmental degenerative joint disease with complete loss of the lateral joint space. Dr. John Gordon also reported spur formation in the patella, medial and lateral joint spaces, and posterior part of the femur. He opined that appellant twisted her knee and injured her lateral meniscus. Dr. John Gordon recommended a magnetic resonance imaging (MRI) scan.[3] In a note dated June 18, 2014, he reported that appellant had trouble walking, standing, or getting up and down. Dr. John Gordon opined that she would eventually need a total knee replacement, but suggested an arthroscopy might be helpful in the meantime.

Dr. John Gordon performed an arthroscopy on October 16, 2014 with a partial lateral meniscectomy and chondroplasty of the patella, medial femoral condyle and medial tibial plateau. Appellant returned to full-duty work on November 19, 2014. On February 11, 2015 OWCP accepted the additional condition of derangement of the right lateral meniscus.

Appellant filed a claim for a schedule award (Form CA-7) on January 5, 2015. In a note dated March 9, 2015, Dr. John Gordon reported that she was generally well, with achiness after sitting and extensive walking due to her partial lateral meniscectomy. He opined that appellant would eventually require a total knee replacement but that she had been stable since December 2014.

On February 11, 2015 OWCP requested additional medical evidence from appellant addressing her permanent impairment for schedule award purposes. It allowed 30 days for a response.

By decision dated April 8, 2015, OWCP denied appellant's claim for permanent impairment of her right lower extremity as she failed to submit sufficient medical opinion evidence in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[4]

---

[3] Appellant underwent an MRI scan of her right knee on July 2, 2014 which demonstrated distal patellar tendinosis, probable progression of lateral meniscus body radial tear now including anterior and posterior horns, lateral meniscus extrusion, progression of tricompartmental osteoarthritis, and small Baker's cyst.

[4] A.M.A., *Guides* (6th ed. 2009).

Appellant requested reconsideration of the denial of her schedule award claim on May 9, 2015. She submitted an April 29, 2015 report from Dr. John Gordon noting her history of injury, and October 16, 2014 surgery. Dr. John Gordon opined that appellant had two right knee conditions, preexisting tricompartmental degenerative joint disease, and a progressive lateral meniscal tear. He reviewed a June 6, 2008 MRI scan which showed degenerative joint disease and a lateral meniscal tear. Dr. John Gordon determined that the June 2, 2014 MRI scan demonstrated a significant increase in the lateral meniscal tear, displacement of the fragment, and maceration of the posterior horn. He opined that appellant's lateral meniscal tear was worsened by her May 30, 2014 employment injury. Dr. John Gordon found that appellant had reached maximum medical improvement on December 8, 2014 following her October 16, 2014 surgery. He reviewed the A.M.A., *Guides* and opined, "the patient has a [c]lass 1 or 10 percent permanent impairment secondary to the increase in the tearing of the lateral meniscus with [g]rade C and a level 2 for the partial lateral meniscectomy."

OWCP's medical adviser reviewed Dr. John Gordon's reports on June 17, 2015. He found that Dr. John Gordon failed to document any calculations supporting his impairment rating of 10 percent. The medical adviser noted that a lateral meniscal tear was 3 percent permanent impairment under the A.M.A., *Guides*,[5] rather than 10 percent. He recommended referral to a second opinion physician.

On June 18, 2015 OWCP referred appellant for a second opinion evaluation with Dr. Stuart J. Gordon, a Board-certified orthopedic surgeon. Dr. Stuart Gordon completed a report on July 1, 2015 and noted that appellant had a preexisting knee condition in 2008 for which she received an MRI. He reviewed Dr. John Gordon's treatment and surgery. Dr. Stuart Gordon found that appellant had difficulty walking, rising up from a chair, running, bending, and with prolonged standing. He found that she walked with an antalgic gait to the right. Dr. Stuart Gordon demonstrated that appellant had significant valgus to the right knee of approximately 40 degrees. He noted that she reported pain through the proximal tibia, patellofemoral region, and diffuse lateral region. Dr. Stuart Gordon found a half grade of quadriceps and hamstring weakness, with flexion to 120 degrees. He obtained additional x-rays of appellant's right knee and found one millimeter of lateral joint space, significant valgus, and tricompartmental changes. Dr. Stuart Gordon determined that appellant had reached maximum medical improvement on November 19, 2014. He applied the A.M.A., *Guides* and found, that appellant had a class 1 meniscal injury.[6] Dr. Stuart Gordon found her grade modifier Functional History (GMFH) was 1 as she returned to full-duty work.[7] He determined that appellant's grade modifier Physical Examination (GMPE) was 2 due to valgus, pain, and crepitus.[8] Dr. Stuart Gordon determined that appellant's grade modifier Clinical Studies (GMCS) was 2 based on her x-rays.[9] He applied

[5] *Id*. at 509, Table 16-3.

[6] *Id.*

[7] *Id.* at 516, Table 16-6.

[8] *Id.* at 516, Table 16-7.

[9] *Id.* at 519, Table 16-8.

the formula of the A.M.A., *Guides* and concluded that appellant had +2 or grade E, 3 percent permanent impairment of her right lower extremity.[10]

OWCP's medical adviser reviewed Dr. Stuart Gordon's report on July 16, 2015 and agreed with his application of the A.M.A., *Guides* and impairment rating of three percent permanent impairment of the right lower extremity. He determined that appellant reached maximum medical improvement on July 1, 2015.

By decisions dated August 17, 2015, OWCP vacated the April 8, 2015 decision and granted appellant a schedule award for three percent permanent impairment of her right leg.

Appellant requested reconsideration on February 23, 2016 and submitted a narrative statement. She took issue with Dr. Stuart Gordon's summation of her statements and the accepted facts. Appellant indicated that she did not require additional work restrictions for her accepted knee injury as she was already performing light-duty work due to a 2002 shoulder injury. She argued that Dr. Stuart Gordon's history of the 2008 MRI scan was not an accurate account of her description. Appellant alleged that Dr. Stuart Gordon treated her unprofessionally and unfairly reduced her permanent impairment rating. She submitted an additional report from Dr. John Gordon dated December 30, 2015 in which he opined that appellant required a total knee replacement.

By decision dated May 20, 2016, OWCP denied modification of its prior decisions finding that appellant had no more than three percent permanent impairment of her right lower extremity for which she received a schedule award. It found that her expressed reasons for disagreeing with Dr. Stuart Gordon's opinion were not sufficient to require modification of the underlying permanent impairment determination.

LEGAL PRECEDENT

The schedule award provision of FECA[11] and its implementing regulations[12] set forth the number of weeks of compensation payable to employees sustaining permanent impairment for 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

[10] *Supra* note 5.

[11] 5 U.S.C. § 8107.

[12] 20 C.F.R. § 10.404.

permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[13]

The protocol and formula of the sixth edition of the A.M.A., *Guides* requires that the physician determine the Class of Diagnosis (CDX) for the lower extremity and apply the appropriate GMFH, GMPE, and GMCS and apply the following formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) to reach the appropriate grade within the class of diagnosis.[14]

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of permanent impairment.[15]

ANALYSIS

The Board finds that appellant has no more than three percent permanent impairment of her right lower extremity for which she has received a schedule award.

In support of her claim for permanent impairment of her right knee, appellant submitted a report dated April 29, 2015 from her attending physician, Dr. John Gordon. While Dr. John Gordon provided an impairment rating of 10 percent of the right lower extremity and mentioned the A.M.A., *Guides*, he did not explain how he reached this impairment rating and did not provide specific citations to the A.M.A., *Guides*. OWCP's medical adviser reviewed the April 29, 2015 report and concluded that it did not comport with the standards of the A.M.A., *Guides*. As Dr. John Gordon did not provide an estimate of impairment conforming to the A.M.A., *Guides*, his opinion is of diminished probative value in establishing appellant's degree of permanent impairment.

OWCP referred appellant for a second opinion evaluation with Dr. Stuart Gordon, to evaluate her permanent impairment for schedule award purposes. In his July 1, 2015 report, Dr. Stuart Gordon reviewed appellant's medical history and performed a physical examination. He listed appellant's physical findings on examination and reviewed new x-rays. Dr. Stuart Gordon provided citations to the appropriate provisions of the A.M.A., *Guides* and evaluated each of the required grade modifiers to determine the grade of appellant's class 1 knee impairment. He noted that due to evaluated physical examination and clinical studies grade modifiers, appellant's impairment rating would be increased under the formula of the A.M.A., *Guides* from two to three percent impairment. OWCP's medical adviser reviewed this report and agreed with the findings and impairment rating.

---

[13] 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 2.808.5a (February 2013); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards,* Chapter 3.700, Exhibit 1 (January 2010).

[14] A.M.A., *Guides* 521.

[15] *Linda Beale*, 57 ECAB 429 (2006).

As there is no other medical evidence of record which comports with the specific provisions and formula of the A.M.A., *Guides*, the Board finds that the weight of the medical opinion evidence establishes that appellant has no more than three percent permanent impairment of her right lower extremity for which she has received a schedule award.

Appellant may request a schedule award or increased schedule award 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 no more than three percent permanent impairment of her right lower extremity for which she has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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