

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

N.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 17-0427
Issued: June 20, 2017**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
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 December 19, 2016 appellant, through counsel, filed a timely appeal from an August 24, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's claim for a schedule award.

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.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case are set forth in the Board's prior decision and incorporated herein by reference. The facts relevant to the present appeal are set forth below.⁴

On March 15, 2004 appellant, then a 44-year-old letter carrier filed a traumatic injury claim alleging that on March 10, 2004, she slipped and fell while delivering mail, injuring her low back, left hip, knee, and elbow. OWCP accepted the claim for left hip contusion, back contusion, lumbosacral strain, left elbow contusion, and left knee sprain. Appellant stopped work on March 10, 2004 and returned to a light-duty position on May 24, 2004.

On June 15, 2006 OWCP referred appellant to Dr. Sheldon Kaffen, a Board-certified orthopedist, for a second opinion. In an August 24, 2006 report, Dr. Kaffen diagnosed contusion of the back resolved, lumbosacral strain resolved, contusion of the left elbow resolved, sprain of the left knee resolved, and left hip contusion resolved. He opined that there were no objective physical findings to indicate that appellant continued to have residuals of the accepted conditions of left hip contusion, back contusion, lumbosacral sprain, left elbow contusion, and left knee sprain. Dr. Kaffen further opined that appellant was medically capable of performing her regular job duties as a letter carrier and noted that any work restrictions were due to a nonwork-related condition of osteoarthritis of the patellofemoral joint of the left knee. He prepared a work capacity evaluation and indicated that appellant was capable of performing her usual job and identified restrictions which were attributed to her diagnosed nonwork-related conditions of osteoarthritis of the patellofemoral joint of the left knee. In a report dated October 10, 2006, Dr. Daniel Breitenbach, a Board-certified internist and appellant's treating physician, reviewed Dr. Kaffen's report and advised that he could not dispute his reasoning and findings. He opined that appellant's back discomfort, left knee pain, and osteoarthritis of the patellofemoral joint were most likely due to excessive weight and not to the contusion of her knee.

On November 28, 2006 OWCP issued a notice of proposed termination of compensation and medical benefits, finding that Dr. Kaffen's August 24, 2006 report and Dr. Breitenbach's October 10, 2006 report established no residuals of the work-related conditions. In a January 5, 2007 decision, it terminated all compensation benefits effective that date, as the weight of the medical evidence established that appellant had no continuing disability or residuals of her accepted injury.

³ Docket No. 08-65 (issued April 23, 2008).

⁴ The record reveals that appellant sustained a traumatic injury on August 6, 2007 which was accepted for right ankle and knee sprain, right foot contusion, and a tear of the right medial meniscus under claim number xxxxxx729. Additionally, on March 11, 2008 appellant sustained a traumatic injury which was accepted for sprain of the left ankle, left knee, neck, back, bilateral hips, bilateral shoulders, and upper arms, and left ankle instability under claim number xxxxxx004. At the time of the August 24, 2016 decision, these cases were not combined with the current claim before the Board.

Appellant filed an appeal with the Board. By decision dated April 23, 2008, the Board affirmed the termination and found no continuing disability after January 8, 2007.⁵

On June 3, 2010 appellant filed a claim for a schedule award (Form CA-7). She submitted a report from Dr. William N. Grant, a Board-certified internist, dated May 8, 2010, who noted that appellant was employed with the postal service, and on the date of injury she had slipped on mud and injured her left hip, lower back, left elbow, and left knee. Dr. Grant noted that appellant underwent physical therapy, but reported intermittent painful discomfort to her left hip, elbow and knee. He indicated that appellant had reached maximum medical improvement (MMI) on April 30, 2010. Dr. Grant noted findings on examination for the left knee, using the range of motion (ROM) method of flexion contracture of 7 degrees for 10 percent lower extremity mild impairment and flexion of 80 degrees for 10 percent lower extremity mild impairment. He combined these values under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁶ appellant had 19 percent impairment of the left lower extremity.⁷ Dr. Grant diagnosed left hip contusion, back contusion, lumbosacral sprain, left elbow contusion, and left knee sprain. He opined that appellant had 19 percent left leg impairment based on her history, physical examination and the A.M.A., *Guides*.

On June 29, 2010 OWCP informed appellant that her claim was not in posture for a schedule award as her case was in closed status. It noted that appellant's benefits had been formally terminated on January 5, 2007.

On August 31, 2015 appellant filed a claim for a schedule award.

On September 2, 2015 OWCP requested that appellant submit a detailed report from her treating physician which provided an impairment evaluation pursuant to the A.M.A., *Guides*.⁸ It specifically requested an opinion as to whether she had reached MMI, a diagnosis upon which the impairment was based, a detailed description of objective findings and subjective complaints, and a detailed description of any permanent impairment under the applicable criteria and tables in the A.M.A., *Guides*.

In a statement dated July 29, 2015, Dr. Todd S. Hochman, a Board-certified internist, indicated that appellant reached MMI.

On October 26, 2015 OWCP denied appellant's claim for a schedule award as the evidence of record was not sufficient to establish permanent impairment to a scheduled member due to the accepted work injury.

On October 29, 2015 appellant, through counsel, requested a telephonic hearing which was held on June 29, 2016.

⁵ *Supra* note 3.

⁶ A.M.A., *Guides* (6th ed. 2009).

⁷ *Id.* at 604.

⁸ *Id.*

Appellant submitted a June 2, 2015 impairment rating from Dr. Catherine Watkins Campbell, a Board-certified family practitioner. Dr. Campbell noted examining appellant on March 1, 2016 and that her claim had been accepted for contusion left hip, contusion of back, lumbosacral sprain, contusion left elbow and forearm, and sprain unspecified sites of the left knee. She indicated that appellant was injured when she slipped in mud while performing her letter carrier duties. Dr. Campbell noted that appellant's history was significant for a work-related injury in 2008 in which she underwent surgery of the left ankle and left knee and a work-related injury in 2007 where she injured her right knee and ankle. Appellant reported constant pain in both knees and nearly constant pain in the left hip and left forearm. Her pain disability index score was 55 out of 70. Dr. Campbell noted a wide waddling gait, bilateral difficulty with heel and toe walk, inability to squat, normal strength, intact reflexes in the legs, tenderness and mild laxity of the left medial joint, and asymmetric popliteal fullness with medial and lateral popliteal tenderness in the left knee. She noted left knee ROM measured 100, 96, 90 degrees of flexion and zero degrees of extension. Dr. Campbell noted that the condition to be rated was the left knee sprain. She found pursuant to Table 16-3 of the A.M.A., *Guides*, a diagnosis of cruciate or collateral ligament injury, appellant was a class 1, with mild laxity. Dr. Campbell noted a grade modifier of 1 pursuant to Table 16-6 of the A.M.A., *Guides* for functional history based on an antalgic gait without the use of an assistive device. The grade modifier for physical examination was 1 pursuant to Table 16-7 of the A.M.A., *Guides* based on mild palpatory and mild ROM deficit for left knee flexion findings. The grade modifier for clinical studies was 1 based on magnetic resonance imaging scan findings of medial collateral ligament injury. Using the net adjustment formula, Dr. Campbell calculated a net adjustment of zero, for a default grade C, 10 percent impairment of the left lower extremity. She opined that, based upon the allowed conditions in the claim, appellant's history, the provided records, physical examination, and her professional evaluation, appellant sustained permanent partial impairment of 10 percent permanent impairment of the left leg under to the A.M.A., *Guides*.

Dr. Campbell also submitted a June 3, 2016 permanent impairment worksheet summarizing the rating.

By decision dated August 24, 2016, an OWCP hearing representative affirmed the October 26, 2015 decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁹ and its implementing regulations¹⁰ 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

⁹ 5 U.S.C. § 8107.

¹⁰ 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides*,¹¹ has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.¹²

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.¹³ The Board notes that, before applying the A.M.A., *Guides*, OWCP must determine whether the claimed impairment of a scheduled member is causally related to the accepted work injury.¹⁴ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁵

OWCP procedures provide:

“Schedule Awards after Termination of Compensation and Medical Benefits. ECAB has held that termination of a claim for all benefits due to a finding of no residuals of the accepted condition(s) does not bar a subsequent schedule award; rather, the claims examiner should consider the schedule award matter separately from the termination of benefits.

If a claimant applies for a schedule award after termination, and submits *prima facie* medical evidence reflecting permanent impairment as a result of the work-related injury or exposure, the claims examiner should develop the claim further, even if a finding of no residuals has previously been made.”¹⁶

ANALYSIS

OWCP accepted that appellant sustained a left hip contusion, back contusion, lumbosacral strain, left elbow contusion, and left knee sprain while in the performance of duty on March 10, 2004. The Board previously affirmed OWCP’s termination of appellant’s compensation benefits effective January 5, 2007 as the weight of the medical evidence reflected that the accepted conditions had resolved and appellant’s current symptoms were due to her nonwork-related osteoarthritis of the patellofemoral joint of the left knee and obesity.

¹¹ A.M.A., *Guides* (6th ed. 2009).

¹² See 20 C.F.R. § 10.404.

¹³ *Thomas P. Lavin*, 57 ECAB 353 (2006).

¹⁴ *Michael S. Mina*, 57 ECAB 379, 385 (2006).

¹⁵ *Veronica Williams*, 56 ECAB 367 (2005) (a schedule award can be paid only for a condition related to an employment injury; the claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.11 (February 2013).

Appellant requested schedule award compensation. She has the burden of proof to establish that the condition for which a schedule award is being sought is causally related to her employment.¹⁷

The Board finds that the medical evidence of record is insufficient to establish permanent impairment to appellant's left knee causally related to the accepted work injury.

In support of her claim for a schedule award appellant initially submitted a May 8, 2010 report from Dr. Grant who noted appellant's March 10, 2004 work injury and found 19 percent left leg permanent impairment due to lost ROM. However, this report is of limited probative value as Dr. Grant failed to provide a medical explanation as to how appellant's examination findings were causally related to her accepted March 10, 2004 work injury.¹⁸

Appellant also submitted a June 2, 2015 report from Dr. Campbell who noted a history of injury and the accepted conditions. Dr. Campbell rated appellant's left leg under Table 16-3 of the A.M.A., *Guides*, cruciate or collateral ligament injury. She opined that based upon the allowed conditions in the claim, appellant's history, the provided records, physical examination and her professional evaluation, appellant had 10 percent permanent impairment of the left leg under to the A.M.A., *Guides*. However, Dr. Campbell also provided insufficient explanation or medical rationale as to how this condition and impairment was causally related to the resolved employment injury and not due to preexisting osteoarthritis of the left knee and obesity.¹⁹ The Board finds that Dr. Campbell's reports failed to sufficiently explain how the claimed impairment arose from the accepted work injury of March 10, 2004. The need for detailed medical rationale is particularly important in a situation such as this where OWCP found, and the Board previously affirmed, that all residuals of the accepted conditions had ceased.²⁰

The medical evidence submitted does not establish that appellant has permanent impairment to a scheduled member of the body causally related to her accepted injury. Consequently appellant has not established entitlement to a schedule award. Appellant did not submit any other medical evidence sufficient to establish a work-related condition that caused physical impairment to a scheduled body member.

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.

¹⁷ *Supra* note 14.

¹⁸ *See F.S.*, Docket No. 15-1884 (issued February 16, 2016) (appellant's physician did not explain that appellant had permanent impairment of a scheduled member as a result of the employment injury).

¹⁹ *Alice J. Tysinger*, 51 ECAB 638 (2000).

²⁰ *See W.J.*, Docket No. 2011-0495 (issued October 7, 2011 (where the Board noted after OWCP terminated appellant's compensation benefits appellant filed a claim for a schedule award and submitted an impairment rating. The Board affirmed OWCP's decision denying a schedule award because the physician failed to sufficiently explain how the claimed impairment arose from the accepted work injury which had resolved).

CONCLUSION

The Board finds that appellant failed to establish permanent impairment warranting a schedule award for the left leg.

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 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