United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 17-1330**
	)	**Issued: December 12, 2018**
U.S. POSTAL SERVICE, HEALTH & RESOURCE MANAGEMENT OFFICE, Coppell, TX, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 31, 2017 appellant filed a timely appeal from a May 9, 2017 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met her burden of proof to establish more than 13 percent permanent impairment of her right lower extremity and 12 percent permanent impairment of her left lower extremity, for which she previously received schedule award compensation.

FACTUAL HISTORY

On September 11, 2008 appellant, then a 62-year-old supervisor of distribution of mails, filed an occupational disease claim (Form CA-2) alleging that she sustained a lumbar sprain, bilateral leg pain, bilateral knees conditions including a meniscal tear to the left knee, and degenerative joint disease in the back, while in the performance of duty. She indicated that she first became aware of her conditions and their relationship to her federal employment on April 22, 2008. Appellant did not stop work.

On October 23, 2008 OWCP accepted the claim for other and unspecified derangement of medial meniscus, bilateral and thoracic or lumbosacral neuritis or radiculitis, not otherwise specified (*nos*). It also accepted tear of the right medial meniscus of the knee. Appellant stopped work on December 6, 2010. On November 16, 2010 she had right knee surgery for a medial meniscal tear with a medial and lateral meniscectomy. On May 3, 2011 appellant had left knee surgery for partial medial and lateral meniscectomy. She began receipt of retirement benefits with the Office of Personnel Management (OPM) effective July 1, 2012.

By decision dated October 23, 2013, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right lower extremity and 12 percent permanent impairment of the left lower extremity. The award covered a period of 69.12 weeks, from November 18, 2012 to September 21, 2013.

On September 14, 2016 appellant filed a claim for an increased schedule award (Form CA-7).

In support of her claim, appellant submitted a September 16, 2016 impairment rating from Dr. Robert A. Helsten, a physical medicine and rehabilitation specialist.[3] Dr. Helsten noted her history of injury and treatment and provided findings. He advised that range of motion showed flexion of 80 degrees, extension of 20 degrees, and left and right lateral movements of 30 degrees each. Dr. Helsten provided neurologic findings which included that appellant had good strength of all the muscles of both lower extremities. He determined that she had normal sensations to the toes of both feet, good heel-toe walking, and normal ambulation with no limp. Dr. Helsten examined the lower extremities and found for the right knee, appellant had moderate, diffuse tenderness and well healed arthroscopic scars were present. He determined that circumference of the right knee was 42.5 centimeters over the mid patella and the ligaments were grossly intact. For the left knee, Dr. Helsten found that it was nontender. He also determined that appellant had well-healed arthroscopic scars present. Dr. Helsten also found that the circumference of the left knee

[3] Dr. Helsten also specialized in family medicine and pain medicine.

over the mid patella was 40.5 centimeters, with intact ligaments. He also noted that range of motion was tested for both knees.

Dr. Helsten advised that appellant was diagnosed with a left knee injury and had arthroscopic surgery of her left knee. He advised that a magnetic resonance imaging (MRI) scan from July 2, 2008, showed tears of the posterior horn and body of the medial meniscus. Dr. Helsten noted that appellant's primary pain was chronic right knee pain and intermittent left knee pain, but he found that she was not having left knee pain or tenderness when examined on September 16, 2016. He also advised that she had persistent right knee pain and was diagnosed with a tear of her right medial meniscus and had undergone arthroscopic surgery.

Dr. Helsten noted that he selected medial meniscal tear as the diagnosis for both of appellant's impairment ratings. He referred to Table 16-3[4] under meniscus injuries for both knees and determined that she had partial medial meniscectomies on both knees. Dr. Helsten found that appellant had a class 1 impairment and the default grade C impairment for each knee was two percent lower extremity impairment. He advised that, for functional history, she had an AAOS Score Standardized of 34. Dr. Helsten indicated that appellant received a +2 grade modifier for functional history for both knees. He noted that she did not receive a grade modifier for clinical studies since these were used to make her diagnosis. For physical examination modifiers, Dr. Helsten advised that the patient had range of motion testing of both knees, three times. He explained that the best range of motion was used to determine the physical examination modifier. Dr. Helsten referenced Table 16-23[5] under knee motion impairments. He found that appellant had a mild impairment with flexion of her right knee. Dr. Helsten indicated that range of motion of her left knee was normal. He referred to Table 16-25[6] and advised that normal range of motion was equal to a class 0 impairment and a mild impairment was equal to a class 1 impairment. Dr. Helsten indicated that, for her right knee physical examination modifier, appellant received a 0 grade modifier. For her left knee, appellant received a grade modifier of -1. Dr. Helsten explained that grade modifiers raised her right knee grade from a class C to an E and that was equal to three percent lower extremity permanent impairment for her right knee. Furthermore, grade modifiers raised appellant's left knee impairment from a class C to D, which was equal to two percent lower extremity impairment for the left knee. Dr. Helsten found that she had three percent right knee low extremity impairment and two percent left knee low extremity impairment due to loss of knee range of motion under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[7] (A.M.A., *Guides*).[8] He explained that the three percent right knee lower extremity impairment was combined with the two percent left knee lower extremity impairment for five percent combined lower extremity impairment for both knees.

[4] A.M.A., *Guides* 509.

[5] *Id.* at 549.

[6] *Id.* at 550.

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

[8] Table 16-3, 509; Table 16-23, 549; and Table 16-25, 550, the A.M.A., *Guides*.

OWCP's district medical adviser (DMA), Dr. James W. Butler, Board-certified in occupational medicine, reviewed the claim on November 13, 2016. He noted appellant's history of injury and treatment. Additionally, the DMA also noted that she had previously received permanent impairment rating of 12 percent for each lower extremity. He explained that he was to determine if there was any additional impairment and review the September 16, 2016 report of Dr. Helsten to determine if he agreed or disagreed with his ratings of permanent impairment. The DMA also noted that he was asked to provide the date of maximum medical improvement (MMI).

The DMA found that appellant had zero percent impairment of her lower extremities based on nerve injuries. He also found that she had 12 percent left lower extremity permanent impairment based on meniscal tear, but no additional impairment. Regarding the right lower extremity, the DMA found 13 percent right lower extremity permanent impairment based on meniscal tear, which was an additional 1 percent impairment from her prior award. He explained that appellant reached MMI on August 7, 2013.

By decision dated May 9, 2017, OWCP granted appellant a schedule award for an additional one percent permanent impairment of the right lower extremity and zero percent of the left lower extremity. The award covered a period of 2.88 weeks and a fraction of a day, from March 7 to April 6, 2014.[9] OWCP based the award on Dr. Helsten's September 16, 2016 report and the DMA's November 13, 2016 impairment rating. It also noted the DMA was accorded the weight because he correctly applied the A.M.A., *Guides* to the examination findings.

LEGAL PRECEDENT

Section 8149 of FECA delegates to the Secretary of Labor the authority to prescribe rules and regulations for the administration and enforcement of FECA. The Secretary of Labor has vested the authority to implement FECA program with the Director of OWCP.[10] Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.[11] FECA, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[12]

The sixth edition of the A.M.A., *Guides* was first printed in 2008. Within months of the initial printing, the A.M.A., *Guides* issued a 52-page document entitled "Clarifications and Corrections, sixth edition, A.M.A., *Guides to the Evaluation of Permanent Impairment.*" The document included various changes to the original text, intended to serve as an erratum/supplement

[9] OWCP noted that the starting date of the schedule award was adjusted to March 17, 2014 because she received compensation for a schedule award through the date of March 16, 2014.

[10] *See* 20 C.F.R. §§ 1.1-1.4.

[11] For complete loss of use of a leg, an employee shall receive 288 weeks compensation. 5 U.S.C. § 8107(c)(2).

[12] 20 C.F.R. § 10.404; *see also*, *Ronald R. Kraynak*, 53 ECAB 130 (2001).

to the first printing of the A.M.A., *Guides*. In April 2009, these changes were formally incorporated into the second printing of the sixth edition.

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[13] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish more than 13 percent permanent impairment of the right lower extremity and 12 percent permanent impairment of the left lower extremity, for which she previously received schedule award compensation.

In support of her claim, appellant submitted a September 16, 2016 impairment rating from Dr. Helsten, who provided a report advising that she had three percent right lower extremity impairment permanent impairment and two percent left lower extremity permanent impairment under the A.M.A., *Guides.* Dr. Helsten also indicated that the three percent right knee lower extremity impairment was combined with the two percent left knee lower extremity impairment for a five percent combined lower extremity impairment for both knees. The Board notes that he only rated appellant for a medial meniscus tear and he did not include the partial and medial meniscectomy. The Board precedent is well settled that when an attending physician's report gives an estimate of impairment, but does not adequately address how the estimate is based upon 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*.[15]

OWCP's DMA reviewed the claim on November 13, 2016. He noted appellant's history of injury and treatment, which included a schedule award for 12 percent of the right lower extremity and 12 percent of the left lower extremity. The DMA explained that she had zero percent impairment of the lower extremities based on nerve injuries. He also found that appellant had 12 percent left lower extremity permanent impairment based on meniscal tear, but no additional impairment. Regarding the right lower extremity, the DMA found a 13 percent right lower extremity permanent impairment based on meniscal tear, which meant an additional 1 percent over the previous assignment.

The Board finds that there is no probative medical evidence of record with respect to employment-related permanent impairment greater than the 13 percent impairment of the right lower extremity and 12 percent of the left lower extremity, for which appellant previously received a schedule award. The Board therefore finds that she failed to establish more than 13 percent

[13] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

[14] *In the Matter of Isidoro Rivera*, 12 ECAB 348 (1961).

[15] *See J.Q.*, 59 ECAB 366 (2008); *Laura Heyen*, 57 ECAB 435 (2006).

impairment of the right lower extremity and 12 percent of the left lower extremity, warranting an increased schedule award.

On appeal, appellant argues that she disagreed with the amount of the schedule award. She argues that Dr. Helsten gave her a low rating and did not perform her examination properly. Appellant argues that her legs were hurting so bad that she could not lift them up without help. She also disagrees that she reached MMI on August 17, 2013. Appellant indicated that she retired because she could not walk or stand on concrete floors and there was no work for her. However, as found above, the medical evidence of record is insufficient to establish greater impairment than that which was previously awarded.

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 not met her burden of proof to establish more than 13 percent permanent impairment of her right lower extremity and 12 percent permanent impairment of her left lower extremity, for which she previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board