

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGIE H. BLACK and DEPARTMENT OF DEFENSE,
FINANCE & ACCOUNTING SERVICE, Cleveland, OH

*Docket No. 99-1847; Submitted on the Record;
Issued March 13, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 41 percent loss of use of her left lower extremity for which she received a schedule award.

On June 4, 1991 appellant, then a 49-year-old lead contact representative, injured her left knee during the course of her federal employment. The Office of Workers' Compensation Programs accepted the claim for a left knee strain, meniscus and anterior ligament tear, and a meniscus tear of the right knee. Appellant underwent left knee arthroscopy on October 11, 1991 and right knee arthroscopy on June 14, 1993. She returned to full duty on August 2, 1993 but stopped work in September 1996 and underwent two more arthroscopic procedures on her left knee on January 8 and May 7, 1997.

By decision dated September 9, 1992, the Office issued appellant a 31 percent schedule award for permanent partial impairment of her left lower extremity, running from June 30, 1992 to May 3, 1994. By decision dated June 15, 1994, the Office issued appellant a 25 percent schedule award for permanent partial impairment of her right lower extremity from May 4, 1994 to September 19, 1995. By decision dated November 6, 1995, the Office issued appellant an additional 4 percent award for her right lower extremity and an additional 10 percent for her left lower extremity. The award ran from October 15, 1995 to July 23, 1996.

In an August 28, 1997 office note, Dr. Matthew J. Kraay, a Board-certified orthopedic surgeon and appellant's attending physician, stated that appellant had significant improvement in her symptoms although pain continued in both knees, as well as continued sensations of clicking and popping in the right knee and intermittent popping sensations in the posterior medial aspect of her left knee. Examination results were provided with the recommendation that physical therapy continue as maximal medical improvement had not been reached.

In a January 2, 1998 report, Dr. Kraay stated that he saw appellant in a follow-up examination on December 4, 1997 and that maximum medical improvement had been attained on her left knee. He stated that appellant had been doing quite well and had no complaints of any pain in her left knee. Dr. Kraay noted that appellant had been very active. Appellant had

done some jogging with friends and was able to walk a considerable distance several times a week. Dr. Kraay noted that appellant could easily walk for an hour without difficulty and had no problems going up and down stairs or getting in and out of a chair.

Appellant had no complaints of pain effusion or swelling. Her wound was well healed. There was no clicking, popping or snapping with range of motion of her knee. Appellant extended fully. She was aligned in about six degrees valgus. Appellant's ligament stability was intact. She had about 110 degree of flexion of her knee. Appellant was not using any assistive devices with ambulation. She had some mild quadriceps atrophy of both knees that persisted. Clinically, however, her quadriceps strength was quite good in both legs. Dr. Kraay noted that appellant was currently having symptoms primarily from her right knee. He stated that, as appellant was quite satisfied with the results of her total left knee arthroplasty, he did not recommend any further treatment of her right knee arthritis.

By letter dated January 12, 1998, appellant requested a schedule award. In a January 20, 1998 letter, the Office advised appellant that her case file had been referred to an Office medical adviser to determine the percentage of her permanent partial impairment based on the information in Dr. Kraay's reports of August 28, 1997 and January 2, 1998.

In a March 1, 1998 report, the Office medical adviser noted that the date of maximum medical improvement was December 4, 1997. Utilizing page 85, Table 64 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, the Office medical adviser found that a total knee replacement, including unicondylar, with a "good" result constituted a 37 percent left lower extremity impairment.

By letter dated March 2, 1998, the Office advised appellant that her permanent partial impairment for her left lower extremity under the fourth edition of the A.M.A., *Guides* equated to a rating of 37 percent. The Office noted that as appellant had already previously received a schedule award for a 31 percent permanent impairment rating as well as an additional 10 percent schedule award for her left lower extremity, the two previously received schedule awards combined to a total of 41 percent. The Office advised that, as appellant's current impairment was 37 percent and she had already been awarded 41 percent, there was no further entitlement to a schedule award for her left lower extremity. The Office noted that the Office medical adviser's calculation was based upon the measurements or objective findings provided by her attending physician.

In a letter dated March 9, 1998, the Office requested Dr. Kraay to review his medical reports dated August 28, 1997 and January 2, 1998 regarding appellant's permanent partial impairment of her left lower extremity as well as the Office medical adviser's computation based on his physical examination findings presented in his medical reports.

In a May 6, 1998 letter, appellant stated that she voiced her concerns regarding her impairment rating to Dr. Kraay and he stated that he would review and amend his finding within the guidelines, if necessary. Appellant related that Dr. Kraay suggested that she seek an independent medical evaluation. She requested that the Office send her to a referral physician to verify her impairment rating.

In a May 20, 1998 letter, the Office advised appellant that, as the medical evidence of file did not present any discrepancies, her claim was not in posture for an independent evaluation. It

noted that Dr. Kraay clearly provided the measurements needed to calculate her permanent impairment rating and, from those measurements, its Office medical adviser made a determination of her impairment percentage. The Office added that, if Dr. Kraay's findings were not correct, he could amend his original measurements.

In a May 22, 1998 letter, Dr. Kraay stated that, based on his last evaluation of appellant on December 4, 1997, appellant had a well-functioning left total knee arthroplasty. In his letter of January 2, 1998, he advised that he felt appellant had reached maximum medical improvement. Dr. Kraay noted that, based on this information, the Office medical adviser established a percentage of permanent impairment of 37 percent, which was based on the fact that appellant had a "good functioning knee replacement." He opined that, based on appellant's last examination, he concurred with this finding.

Dr. Kraay indicated that appellant was unhappy with her impairment rating, had complained that her condition had deteriorated since he last saw her, and had written him several times that she did not believe the information he provided the Office regarding her degree of disability accurately reflected her actual situation. He stated that the integrity of the doctor/patient relationship would be best served if appellant obtained an independent medical examination to reevaluate her.

In a letter dated November 10, 1998, the Office advised appellant that, if she wished to seek a second opinion other than the one provided by her attending physician, she could do so at her own expense and at her own convenience.

In a January 18, 1999 report, Dr. George Muschler, a Board-certified orthopedic surgeon, discussed appellant's employment injury along with her history of medical treatment. He noted that appellant currently experienced right knee pain at night. However, when she walked long distances she was limited to less than a half mile by fatigue and "jitteriness," perceived weakness and possible instability of her left knee. The physical examination revealed a mildly obese woman with a stable gait without severe pain. She was able to rise from a chair smoothly. A click in the left knee was occasionally present. Dr. Muschler related that appellant was able to resolve this clicking sensation consciously by slightly tightening her quads and hamstrings. No evidence of patellofemoral problems or malalignment was noted. There was no medial laxity.

Range of motion was 0 to 100 degrees, limited by anterior knee pain. There was persistent mild tenderness over the anterior tibial tubercle in the region of her fall and slight discoloration in this area. A burning sensation and rather significant tenderness at the extreme proximal end of her scar were noted. The right knee showed an excellent and full range of motion without varus or valgus subluxation. Lateral pain and tenderness along the joint line were noted, but there was no evidence of meniscal symptoms or patellofemoral instability. Mild patellofemoral pain was present on compression. No effusion was noted. X-rays of the left knee showed excellent fixation and alignment of the left total knee arthroplasty with no evidence of loosening. The left knee also showed mild and early changes in all three compartments with relatively good maintenance of joint space and no cystic erosion or bone loss.

Dr. Muschler provided the following impressions: (1) intermittent painless click, left knee, associated with a slight lateral laxity, which can be consciously resolved; (2) left knee pain anterior tibia following direct anterior trauma, should resolve over time; (3) burning pain and

tenderness in the proximal end of the scar, left knee, may respond to a local injection; and (4) moderate right knee early degenerative arthritis, symptoms not yet justifying intervention.

In a March 31, 1999 report, the Office medical adviser stated that the date of maximum medical improvement was December 4, 1997, and determined that appellant had a 37 percent impairment of her left lower extremity. A left total knee replacement points rating was generated by using Table 66, page 88 of the fourth edition of the A.M.A., *Guides*. Under category (a) pain, appellant's mild or occasional pain after a half-mile walk was denoted a value of 50 points. Under category (b) range of motion, a 0 to 100 range was noted to be a value of 45 points. Under category (c) stability, a mild lateral instability of 6 degrees was noted to be a value of 10 points. The sum of categories (a) thru (c) was a positive 105 points. Under category (d) no flexion contracture was noted; thus zero points were attributed. Under category (e) there was a zero degree extension lag; thus zero points were attributed. Under category (f) alignment was noted at 6 degrees valgus; thus 6 points were attributed. The sum of categories (d) thru (e) equated to 6 points. The final points resulted in 99 points which was the sum of categories (a) thru (c) minus the sum of categories (d) thru (e). Based on Table 64 on page 85, the Office medical adviser found 99 points resulted in a "good result" which equated to a 37 percent lower extremity impairment.

By decision dated April 5, 1999, the Office determined that appellant was not entitled to any additional schedule award of compensation. Appellant was advised that entitlement to medical benefits for the effects of her injury continued.

The Board finds that the medical evidence establishes that appellant has more than a 41 percent permanent impairment for the loss of use of her left lower extremity for which she received a schedule award.

Section 8107 of the Federal Employees' Compensation Act¹ provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

In this case, there were some errors in the calculations estimating appellant's knee replacement results under Table 66, page 88 which affected appellant's impairment rating under Table 64, page 85. Initially the Board notes that rating knee replacement results under Table 66, page 88 is the sum of the points in categories a, b and c minus the sum of the points in categories d, e and f. Under category a, the Office medical adviser noted that appellant suffered mild or

¹ 5 U.S.C. § 8101 *et seq.*

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body, for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a) (1999).

³ *A. George Lampo*, 45 ECAB 441 (1994).

occasional pain after a half-mile walk and attributed 50 points. However, as 45 points is designated for mild or occasional pain, appellant has 45 points under category a.

Under category b, the Office medical adviser stated that range of motion was 0 to 100 degrees and attributed 45 points. However, Table 66 specifically instructs the estimator to attribute 1 point per 5 degrees with the maximum number of points being 25. A 20 point value is attributed to a range of 0 to 100 degrees at 1 point per 5 degrees. Thus, appellant has 20 points under category b.

Under category c, the Office medical adviser properly found that a mild lateral instability of 6 degrees resulted in 10 points. The combination of categories a, b, and c or 45 plus 20 plus 10 equates to 75 points. The Office medical adviser properly determined that there was zero flexion contracture in category d, zero extension lag in category e and a six point alignment in category f. The combination of categories d, e and f or zero plus zero plus 6 equates to 6 points. The final point results is 75 minus 6 or 69 points. Inasmuch as 69 points equates to a "fair result" under Table 64, page 85, appellant's percentage of lower extremity impairment is 50 percent. As appellant previously received a schedule 41 percent award for her left lower extremity, she is entitled to an additional 9 percent.

The decision of the Office of Workers' Compensation Programs dated April 5, 1999 is modified to reflect a schedule award entitlement for an additional nine percent of her left lower extremity. The case is remanded to the Office for further action consistent with this opinion.

Dated, Washington, DC
March 13, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member