

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOESETTE C. BOBO and U.S. POSTAL SERVICE,
POST OFFICE, Sharon Hill, PA

*Docket No. 01-12; Submitted on the Record;
Issued September 4, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent permanent impairment of her left lower extremity and more than a zero percent permanent impairment of her right lower extremity.

The Board has duly reviewed the record on appeal and finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

To resolve a conflict in medical opinion on the extent of permanent impairment causally related to the accepted employment injury, the Office of Workers' Compensation Programs referred appellant to Dr. E. Balasubramian, a Board-certified orthopedic surgeon, for an impartial medical opinion pursuant to 5 U.S.C. § 8123(a). The Office provided Dr. Balasubramian with a statement of accepted facts indicating that appellant suffered bilateral meniscal tears as a result of her federal employment and that she underwent surgery to correct her left knee condition on January 2, 1996. The Office advised Dr. Balasubramian to use the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fourth edition, as the basis for calculating an award based on his clinical findings.

In a report dated June 20, 1999, Dr. Balasubramian related appellant's history and medical course as well as his findings on examination, which included 110 degrees range of motion bilaterally and some chondromalacia of the patella bilaterally with patellofemoral pain. He stated: "Based on my physical examination, review of the records, and review of the MRI [magnetic resonance imaging scan], it is my opinion that the patient has arthralgic type of pain in the knee. This does not correspond to any work injury. At the present time she can return back to work and I do not see that there is any disability at this time."

An Office medical adviser noted that the Office had accepted a left partial meniscectomy and proceeded to apply the A.M.A., *Guides* to determine the extent of appellant's employment-related impairment.

On November 30, 1999 the Office issued a schedule award for a two percent impairment of the left leg based upon the opinion of the Office medical adviser.

In a decision dated June 22, 2000, an Office hearing representative affirmed the November 30, 1999 schedule award. The hearing representative found that the opinion of the impartial medical specialist, Dr. Balasubramian, constituted the weight of the medical evidence.

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative, or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.¹ Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Federal Employees' Compensation Act² will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.³

In this case, the report of the impartial medical specialist requires clarification. Table 64, page 85, of the A.M.A., *Guides* provides for a maximum of two percent impairment of the lower extremity for either a partial medial or partial lateral meniscectomy. Dr. Balasubramian, however, did not describe the meniscectomies as partial or total, offered no impairment rating and made no reference to the applicable criteria of the A.M.A., *Guides* for either extremity. The Office should request a supplemental report from the impartial medical specialist to provide an impairment rating conforming to the protocols of the A.M.A., *Guides*.

¹ See *Nathan L. Harrell*, 41 ECAB 402 (1990).

² 5 U.S.C. § 8123(a) provides the following: "An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him present to participate in the examination. If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

³ *Harold Travis*, 30 ECAB 1071 (1979).

The June 22, 2000 and November 30, 1999 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
September 4, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member