U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA L. LATTIMORE and U.S. POSTAL SERVICE,
POST OFFICE, Champaign, IL

Docket No. 02-2245; Submitted on the Record;
Issued May 20, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent permanent impairment to her left leg.

On February 22, 2000 appellant, then a 41-year-old window clerk, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she sustained injury when she fell while in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for bilateral knee contusions and a left knee strain. Appellant underwent knee surgery on April 26, 2000 for a left medial meniscus tear. She returned to a light-duty position on June 8, 2000 and retired from federal employment in December 2000.

In a decision dated August 24, 2001, the Office issued a schedule award for a two percent permanent impairment to the left leg. By decision dated January 24, 2002, the Office denied modification.

The Board finds that the case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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, the Act 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 all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

appropriate standard for evaluating schedule losses. As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.[3]

In a report dated July 23, 2001, an Office medical adviser opined that appellant had a two percent permanent impairment to the left leg. The medical adviser noted that appellant had complaints of occasional pain with full range of knee motion and no atrophy. The medical adviser identified Table 17-33, which provides diagnosis-based impairment estimates for the leg. Under Table 17-33, a partial medial meniscectomy results in a two percent leg impairment.[4]

Following the August 24, 2001 schedule award, appellant submitted an October 5, 2001 report from Dr. R.J. Burkle, an orthopedic surgeon, who opined that, in addition to the two percent impairment under Table 17-33, appellant had a five percent impairment for hip motion impairment, and five percent for pain, citing Table 18-5. Dr. Burkle does not explain how a hip impairment is causally related to the employment injury. In a report dated January 14, 2002, an Office medical adviser noted that a hip condition had not been accepted and opined that any hip motion impairment was not causally related to the employment injury.

Although the Office medical adviser opined that the hip condition was not employment related, this does not resolve the issue of whether a leg impairment resulting from the hip condition may be included in a schedule award. It is well established that, in determining the degree of impairment for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body member are to be included in the evaluation of the permanent impairment.[5] The Office medical adviser does not provide an opinion as to whether the hip condition was a preexisting condition and therefore should be considered in determining the permanent impairment to the leg. The Board notes that a March 8, 2000 treatment note contains a history of a prior hip surgery.

The case will be remanded to the Office for further development of the evidence. The Office should secure a medical report with an opinion as to whether the hip condition preexisted the employment injury, and if so, whether there is a resulting additional impairment to the leg. After such further development as the Office deems necessary, it should issue an appropriate decision.

[3] FECA Bulletin No. 01-05 (issued January 29, 2001).

[4] A.M.A., *Guides*, 546, Table 17-33.

[5] *Mike E. Reid*, 51 ECAB 543 (2000); *Kenneth E. Leone*, 46 ECAB 133 (1994).

The decision of the Office of Workers' Compensation Programs dated January 24, 2002 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
May 20, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member