

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

---

**JOHANNA L. HLADUN, Appellant**

**and**

**DEPARTMENT OF JUSTICE, FEDERAL  
BUREAU OF INVESTIGATION,  
San Diego, CA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 05-1218  
Issued: August 11, 2005**

*Appearances:*  
*Johanna L. Hladun, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 12, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated April 15, 2005, adjudicating her schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the April 15, 2005 decision.

**ISSUE**

The issue is whether appellant has more than a nine percent impairment of the left lower extremity.

**FACTUAL HISTORY**

On February 3, 2003 appellant, then a 34-year-old special agent, filed a traumatic injury claim alleging that on January 30, 2003 she injured her left knee while running as part of her fitness-for-duty exercise program. The Office accepted her claim for aggravation of left knee

degenerative arthrosis.<sup>1</sup> Appellant filed a claim for a schedule award for impairment of her left lower extremity.

In a report dated October 20, 2003, Dr. Gregory J. Loren, an attending Board-certified orthopedic surgeon,<sup>2</sup> provided physical findings on examination. However, he did not provide an impairment rating of appellant's left knee.

In a March 1, 2004 report, Dr. Arthur S. Harris, an Office orthopedic consultant, reviewed the findings in Dr. Loren's October 20, 2003 report and determined that appellant had a nine percent impairment of the left lower extremity which included a two percent impairment due to a partial medial meniscectomy and seven percent due to residual ligamentous instability. He based his impairment rating on the (5<sup>th</sup> ed. 2001) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

By decision dated March 29, 2003, the Office granted appellant a schedule award for 25.92 weeks for the period October 20, 2003 to April 18, 2004, for a nine percent impairment of the left lower extremity.

Appellant requested an oral hearing before an Office hearing representative. On January 14, 2005 a telephonic hearing was held. The hearing representative stated that, if appellant believed her left lower extremity impairment to be more than nine percent, she should submit a medical report with an impairment rating based on applicable sections of the A.M.A., *Guides*.

In a report dated March 10, 2005, stamped as received by the Office on March 15, 2005, Dr. Loren stated that he had evaluated appellant on February 4, 2005 and determined that she had a 25 percent impairment of the left lower extremity. He provided detailed physical findings on examination and referred to specific sections of the A.M.A., *Guides* in explaining how he made his determination of her left lower extremity impairment.

By decision dated April 15, 2005, the hearing representative affirmed the March 29, 2004 decision. She stated:

“[Appellant] was informed [at the hearing] of the medical evidence necessary to support her claim of additional impairment and advised of the medical evidence required. To that end, a copy of the Office's instructions regarding schedule award claims was forwarded to [appellant] after the hearing, in accordance with her request. The record was held open to allow for submission of additional medical evidence. However, as of the date of this decision, no further medical reports in support of [appellant's] entitlement to an additional schedule award [have] been submitted for review.”

---

<sup>1</sup> Appellant underwent surgery on April 3, 2003 consisting of left knee arthroscopy with partial posterior horn medial meniscectomy, a partial left central meniscectomy, extensive chondroplasty of the medial compartment with microfracture technique, removal of adherent intraarticular body, intercondylar notch and notchplasty.

<sup>2</sup> Dr. Loren performed appellant's April 3, 2003 left knee surgery.

## LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulation<sup>4</sup> sets 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>6</sup>

## ANALYSIS

In *William A. Couch*,<sup>7</sup> the Board remanded the case because the Office, in issuing a decision dated July 17, 1989, failed to consider new evidence that it received on July 13, 1989. The Board stated:

“The Federal Employees' Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.”

In this case, the Office received Dr. Loren's February 2, 2005 report on March 15, 2005, one month before the April 15, 2005 decision. As the Board held in *Linda Johnson*,<sup>8</sup> when the Office receives relevant evidence, it must be properly reviewed by the Office. The Office hearing representative stated in the April 15, 2005 decision that no medical evidence had been

---

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

<sup>7</sup> 41 ECAB 548 (1990).

<sup>8</sup> See *Linda Johnson*, 45 ECAB 439 (1994).

received from appellant since the October 20, 2003 report from Dr. Loren. Therefore, it is clear from the record that the hearing representative did not consider the February 2, 2005 report from Dr. Loren. Since this report was in the Office's possession at the time of the April 15, 2005 decision, it must be considered by the Office in evaluating the evidence.<sup>9</sup> The case will be remanded for a proper review of the evidence and an appropriate final decision.

**CONCLUSION**

The Board finds that this case must be remanded to the Office for consideration of all the evidence submitted by appellant in support of her claim, to be followed by a *de novo* decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 15, 2005 is set aside and the case remanded for further action consistent with this decision.

Issued: August 11, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>9</sup> *Willard McKennon*, 51 ECAB 145 (1999).