

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

LISA BASILEO, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 05-649
Issued: June 7, 2005**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On January 24, 2005 appellant filed a timely appeal of an October 13, 2004 decision of the Office of Workers' Compensation Programs, finding that she did not have more than a seven percent permanent impairment to her right leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issues in this case.

ISSUE

The issue is whether appellant has more than a seven percent permanent impairment to her right leg, for which she received a schedule award on March 12, 2003.

FACTUAL HISTORY

On July 11, 2001 appellant, then a 45-year-old letter carrier, filed an occupational disease claim for compensation (Form CA-2) alleging that she sustained a right knee injury causally related to factors of her federal employment. Appellant underwent right knee surgery on August 17, 2001. The Office accepted the claim for chondromalacia of the patella and a lateral meniscus tear.

On May 1, 2002 the Office referred appellant, together with medical records and a statement of accepted facts, to Dr. Steven Valentino, an osteopath, for an evaluation that included an opinion as to a permanent impairment to the right leg. The statement of accept facts indicated that appellant had a prior accepted claim for right Achilles tendinitis. In a report dated May 29, 2002, Dr. Valentino provided a history and results on examination. He opined that appellant had a two percent permanent impairment to the right leg for a partial lateral meniscectomy. Dr. Valentino also opined that appellant did not have any continuing employment-related residuals. An attending orthopedic surgeon, Dr. Thomas Corcoran, opined in a September 5, 2002 report that appellant did have degenerative changes in her knee as a result of work activities.

The Office found that a conflict in the medical evidence existed on the issue of whether appellant continued to have residuals of the employment injury. Appellant was referred to Dr. Andrew Collier, Jr., a Board-certified orthopedic surgeon, to resolve the conflict. In a report dated December 4, 2002, Dr. Collier indicated that appellant did have degenerative changes in the right knee, but he did not believe the degenerative changes were work related. He indicated that appellant did have some minor residuals of her patellofemoral chondromalacia.

In a report dated February 4, 2003, an Office medical adviser opined that appellant had a seven percent permanent impairment to the right leg. According to the medical adviser, appellant had a two percent impairment under Table 17-33 for the partial meniscectomy and five percent impairment for chondromalacia under Table 17-31.

By decision dated March 12, 2003, the Office issued a schedule award for a seven percent permanent impairment to the right leg. The period of the award was 20.16 weeks commencing December 4, 2002.

Appellant submitted a report dated August 7, 2003 from Dr. Nicholas Diamond, an osteopath, who provided a history and results on examination; he reported that manual muscle testing “reveals the quadriceps is graded 4/5. The gastrocnemius is graded 4/5.” He opined that appellant had a 12 percent impairment for motor strength deficit (knee extension) and 12 percent for ankle plantar-flexion under Table 17-8 for a combined motor strength impairment of 27 percent.¹ Dr. Diamond also found a 3 percent impairment for pain pursuant to Figure 18-1, resulting in a 30 percent right leg impairment.

In a decision dated November 14, 2003, an Office hearing representative remanded the case for further development. The hearing representative stated that the case should be referred to an Office medical adviser for an opinion as to the degree of permanent impairment and recommended that the case be administratively combined with the prior claim since both involved the right leg.²

In a report dated December 11, 2003, an Office medical adviser opined that there was no impairment from the Achilles tendinitis since Dr. Collier reported a normal right Achilles

¹ Dr. Diamond apparently intended to report a 17 percent impairment for ankle plantar flexion under Table 17-8.

² It does not appear that the case records were combined.

tendon. The medical adviser stated that earlier evaluations had not found any muscle weakness, there was no evidence of any objective neuromuscular damage and muscle weakness is often a subjective finding. According to the medical adviser, impairment for pain had already been included in the prior determination; he found no evidence to support more than a seven percent permanent impairment to the right leg.

By decision dated December 12, 2003, the Office found that the evidence did not support permanent impairment to the right leg greater than seven percent and therefore appellant was not entitled to an additional schedule award. Appellant requested a hearing, which was held on July 27, 2004. In a decision dated October 13, 2004, the Office hearing representative affirmed the December 12, 2003 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act 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.³ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants.⁴ As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.⁵

ANALYSIS

The Office issued a schedule award for a seven percent permanent impairment to the right leg, based on the December 4, 2002 report of Dr. Collier and the March 12, 2003 report from an Office medical adviser. The Board notes that Dr. Collier had been selected as an impartial medical specialist, but the conflict was over continuing employment-related residuals and he did not offer an opinion as to permanent impairment. For the purposes of a schedule award, Dr. Collier is a second opinion referral physician.⁶

Dr. Collier did provide a report describing appellant's condition, noting the prior meniscectomy and minor residuals of patellofemoral chondromalacia. The Office medical adviser identified Table 17-33, which provides a two percent leg impairment for a partial lateral meniscectomy.⁷ In addition, the medical adviser identified Table 17-31, which provides

³ 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).

⁴ *A. George Lampo*, 45 ECAB 441 (1994).

⁵ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁶ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

⁷ A.M.A., *Guides* 546, Table 17-33.

impairments for arthritis based on cartilage intervals. A footnote to Table 17-31 provides that complaints of patellofemoral pain, but without joint space narrowing, are given a five percent lower extremity impairment.⁸ The medical adviser found that the patellofemoral chondromalacia resulted in a five percent impairment under Table 17-31. Applying the Combined Values Chart to these impairments of appellant's right knee results in a seven percent impairment to the leg.

The medical evidence of record therefore supported a finding of a seven percent permanent impairment to the right leg. Appellant contends that the August 7, 2003 report from Dr. Diamond supports a greater impairment. Dr. Diamond, however, relied primarily on manual muscle testing without addressing the concerns of the A.M.A., *Guides* with respect to strength evaluations. As noted by the A.M.A., *Guides*, "strength measurements are functional tests influenced by subjective factors that are difficult to control ... the [A.M.A.,] *Guides* does not assign a large role to such measurements."⁹ The manual muscle testing for the lower extremities requires that the results should be concordant with other observable pathologic signs and medical evidence; if the measurements are made by one examiner, they should be consistent on different occasions.¹⁰ Dr. Diamond did not provide explanation regarding the manual muscle testing, did not discuss causal relationship with the employment injuries or otherwise provide a reasoned medical opinion with respect to strength impairments. The Board also notes that Dr. Diamond identified Figure 18-1 and provided an additional three percent for pain. The A.M.A., *Guides* indicate that Chapter 18 should not be used to rate pain-related impairment for any condition that can be adequately rated on the basis of impairment rating systems in other chapters.¹¹ Dr. Diamond did not discuss the appropriateness of Figure 18-1 in this case. For these reasons, the Board finds that Dr. Diamond's report is of diminished probative value and is not sufficient to establish a leg impairment greater than seven percent.

CONCLUSION

The Board finds that the weight of the probative medical evidence of record does not establish more than a seven percent permanent impairment to the right leg, for which appellant received a schedule award on March 12, 2003.

⁸ *Id.* at 544.

⁹ *Id.* at 507.

¹⁰ *Id.* at 531.

¹¹ *Id.* at 571.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 13, 2004 is affirmed.

Issued: June 7, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member