United States Department of Labor
Employees' Compensation Appeals Board

V.M., Appellant	)	
	)	
and	)	**Docket No. 06-2075**
	)	**Issued: February 8, 2007**
DEPARTMENT OF VETERANS AFFAIRS, TENNESSEE VALLEY HEALTH CARE SYSTEM, Murfreesboro, TN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 11, 2006 appellant filed a timely appeal from a November 16, 2005 merit decision of the Office of Workers' Compensation Programs awarding her compensation for a 10 percent permanent impairment of her left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue in this case.

ISSUES

The issues are: (1) whether appellant has established that she has more than a 10 percent permanent impairment of her left lower extremity for which she received a schedule award; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 9, 2004 appellant, a 47-year-old nurse, filed a traumatic injury claim alleging that she injured her knees on that date when she was struck by a stretcher at work. The Office

accepted her claim for bilateral chondromalacia and left medial meniscus tear. Appellant's claim was expanded on November 3, 2005 to include medial meniscus tear of the right knee. She underwent meniscectomies of the left and right knees on October 12 and November 16, 2004 respectively.

On August 24, 2005 appellant filed a request for a schedule award. By letter dated October 3, 2005, the Office informed her that the evidence submitted was insufficient to support her request. The Office advised appellant to provide a physician's assessment on the date of maximum medical improvement (MMI) and the loss of function of her lower extremities based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (hereinafter, A.M.A., *Guides*).

Appellant submitted a report dated June 24, 2005 from Dr. Charles R. Kaelin, Jr., a Board-certified orthopedic surgeon, who found that she had full range of motion of her knees. Dr. Kaelin concluded that, based upon her range of motion, quad atrophy and narrowing at the compartment of her knee, appellant had a 15 percent impairment of each lower extremity. He recommended a permanent 15-pound lifting restriction. Additional restrictions included sitting eight hours per day, with 15-minute rest periods, standing and walking three hours per day and no repetitive climbing.

The Office forwarded the case file to the district medical adviser for an opinion on the degree of permanent impairment of appellant's lower extremities. In a November 10, 2005 report, the Office medical adviser concluded that the date of MMI was June 24, 2005, the date of Dr. Kaelin's report. He noted that appellant had undergone an arthroscopy for partial medial and lateral meniscectomies on October 12, 2004. Referring to Table 17-33, page 546 of the A.M.A., *Guides*, the Office medical adviser concluded that appellant had a 10 percent impairment rating of her left lower extremity. He stated that Table 17-2, page 526 precluded combining impairments for diagnosis-based estimates with atrophy, gait, strength and range of motion. He further concluded that there was no basis given for a schedule award for appellant's right lower extremity.[1]

On November 16, 2005 the Office granted appellant a schedule award for a 10 percent impairment of her left lower extremity, finding the date of MMI to be June 24, 2005. The award was for a period of 57.60 weeks, from February 21, 2005 to March 31, 2006.

On December 15, 2005 appellant submitted a request for reconsideration of the Office's November 16, 2005 schedule award. In support of her request, appellant submitted copies of operative reports and physician's reports previously submitted. Appellant also submitted an unsigned June 2, 2005 functional capacity evaluation.

By decision dated January 6, 2006, the Office denied appellant's request for reconsideration.

[1] The Board has jurisdiction to consider and decide appeals from final decisions; there shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case. 20 C.F.R. § 501.2(c). As of the date of the filing of this appeal, the Office had not issued a final determination on the degree of permanent impairment of appellant's right lower extremity. Therefore, the Board does not have jurisdiction over this matter.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[4]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides,* with the medical adviser providing rationale for the percentage of impairment specified.[5]

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for a decision. The case will be remanded to the Office for further development of the medical evidence.

In support of her claim for a schedule award, appellant submitted a June 24, 2005 report from Dr. Kaelin who found that she had full range of motion of her knees. Based upon her range of motion, quad atrophy and narrowing at the compartment of her knee, Dr. Kaelin concluded that appellant had a 15 percent impairment of her left lower extremity. However, he provided no clinical findings to support his opinion, provided no explanation as to how he arrived at his rating and failed to opine that appellant had reached maximum medical improvement. Moreover, Dr. Kaelin failed to indicate the applicable tables and figures of the A.M.A., *Guides* upon which he relied in calculating the impairment. For all of these reasons, it is impossible for the Board to determine from Dr. Kaelin's report the degree of appellant's permanent disability or the date of MMI.

The Office medical adviser utilized Dr. Kaelin's findings in concluding that appellant had a 10 percent impairment of her left lower extremity. However, as indicated above, Dr. Kaelin's report did not provide a sufficient basis for a determination of permanent impairment. The Board finds that further development of the medical record is needed to establish the degree of impairment to appellant's left lower extremity. On remand the Office should refer appellant to an appropriate medical specialist for an evaluation of permanent impairment caused by the June 9, 2004 employment injury and an impairment rating based on a proper application of the

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[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] A.M.A., *Guides* (5th ed. 2001).

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

fifth edition of the A.M.A., *Guides*. Following such further development as the Office deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for a decision on the schedule award issue and must be remanded for further development of the medical evidence. In light of the Board's ruling on the first issue, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2005 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision.

Issued: February 8, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board