United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 11-1930**
	)	**Issued: April 18, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 23, 2011 appellant filed a timely appeal from the August 2, 2011 Office of Workers' Compensation Programs' (OWCP) schedule award decision. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained permanent impairment to her right leg.

FACTUAL HISTORY

On March 20, 2008 appellant, then a 56-year-old mail processing clerk, filed a traumatic injury claim alleging that she injured her right leg and knee when she bumped it on an all-purpose container (APC) in the performance of duty. She did not stop work. On May 6, 2008

[1] 5 U.S.C. § 8101 *et seq.*

OWCP accepted appellant's claim for contusion and sprain of the right knee, lateral collateral ligament. Appellant received compensation benefits.[2]

In a September 24, 2008 report, Dr. Scott Sporer, a Board-certified orthopedic surgeon, advised that appellant was treated for complaints of right knee pain. In March 2007, appellant previously underwent bilateral total knee arthroplasty. Dr. Sporer stated that appellant related that she never had complete relief of her symptoms and subsequently sustained an injury at work in March 2008. Appellant's right knee was in constant pain, described as a sharp throbbing sensation which worsened with any standing or walking. Dr. Sporer examined appellant and found that she ambulated with the assistance of a cane, she had a decreased cadence and antalgic gait. He noted that the sensory and motor examinations were grossly intact. As to range of motion, appellant had full extension with further flexion to approximately 65 degrees, good range of motion of her hips without pain or discomfort and negative active and passive straight leg raise for pain. Dr. Sporer diagnosed painful right total knee arthroplasty.

In an October 22, 2008 report, Dr. Ira B. Kornblatt, a Board-certified orthopedic surgeon, examined appellant and determined that the examination of the right knee was unchanged with full extension to 80 degrees of flexion. He determined that her knee was stiff and painful. Dr. Kornblatt stated that appellant could live with the pain or consider an exploration and open lysis of adhesion.

On October 28, 2010 appellant filed a claim for a schedule award. In an October 28, 2010 report, Dr. Jacob Solomon, a specialist in occupational and environmental medicine, noted that appellant had chronic bilateral knee injuries and pain and had retired after working for the employing establishment for 24 years. She had multiple derangements of both knees with swelling and severe arthritis and had multiple treatments with bilateral knee replacement surgery on March 13, 2007. Dr. Solomon noted that both knees were chronically treated for degenerative joint disease with internal derangement and progressive arthritis where she eventually required knee replacement surgery. He advised that appellant returned to work with restrictions in September 2007 until she retired on July 26, 2010. After her knee replacement surgery, appellant had recurrent knee trauma on March 20, 2008, when she bumped her right knee on an APC container at work. Dr. Solomon stated that his impairment rating was based upon the "bilateral knee replacement rather than the contusion since this was [an] insignificant event and her primary disability is the bilateral knee replacement surgery. The contusion to the right knee caused chronic swelling of her knee." Dr. Solomon examined appellant and noted that she had swelling of both knees, greater on the right, and a Baker's cyst on x-ray of the knees. He determined that she had functionally-decreased flexion in both knees at approximately 100 degrees. Dr. Solomon found severe neuropathy in both legs, related to diabetes. He explained that appellant's activities of daily living were decreased due to knee replacement surgery as a result of chronic pain, which resulted in difficulty walking more than a quarter of a block without a cane. X-rays showed that both knee replacements were in good alignment and good position. Dr. Solomon explained that the "contusion that occurred to the right knee has apparently only resulted in chronic swelling of the knee and aggravated limited range of motion." He utilized the

[2] The record reflects that appellant had a preexisting knee condition warranting bilateral knee replacements in 2007. She subsequently retired in March 2010.

American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (6th ed. 2009) (hereinafter, A.M.A., *Guides*). Dr. Solomon referred to Table 16-3, Knee Regional Grid-Lower Extremity Impairments and explained that both functional history, grade modifiers due to decreased ambulatory ability would be utilized.[3] Due to swelling and decreased range of motion, a physical examination grade modifier of 2 was warranted. Regarding clinical studies, namely x-rays and electromyogram studies, Dr. Solomon selected a grade modifier of 2. He indicated that this would be utilized on both the right and left knees since both of these conditions occurred while she worked at the employing establishment. Dr. Solomon noted that the left leg was not included during paperwork in the past years and explained that "the fact that she had both knees operated on the same day and both knees degenerated due to same reason, namely her work, they should both be included in her impairment rating." He determined that both the right and left knee impairment rating would be given a grade C using the net adjustment formula and concluded that appellant had a final lower extremity impairment of 25 percent for the right leg and 25 percent to the left leg resulting in a combined 50 percent impairment. Dr. Solomon explained that maximum medical improvement occurred on July 26, 2010, the date she retired.

On March 9, 2011 OWCP referred appellant's file to OWCP's medical adviser and requested that he review the record and provide an opinion on impairment pursuant to the A.M.A., *Guides*.

In a March 14, 2011 report, the medical adviser noted appellant's history of injury and treatment and utilized the A.M.A., *Guides*. He found that appellant's history included a nonwork-related bilateral total knee replacement in March 2007. The medical adviser explained that Dr. Solomon's impairment recommendation was based on a class 2 diagnosed-based estimate of a total knee replacement. However, the 2007 knee surgery was not work related. The medical adviser stated that the right knee continued to cause appellant pain and disability even prior to her March 20, 2008 work injury. He advised that the energy imparted to the knee during a contusion would not be sufficient to cause any long-term damage. Furthermore, the contusion was a temporary aggravation of a preexisting condition, was self-limiting and would have resolved within six weeks. The medical adviser opined that it was more probable than not that the contusion which appellant sustained in her right knee had nothing to do with her current impairment. Rather, the pain and disability she had in the knee was related to the nonwork-related knee replacement. The medical adviser explained that because a contusion was self-limiting, it would have resolved, and left appellant with no long-term impairment. He determined that appellant had no employment-related permanent impairment of the right leg.

By decision dated August 2, 2011, OWCP denied appellant's claim for a schedule award.

[3] A.M.A., *Guides* 511.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing federal regulations,[5] 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, FECA 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] For decisions issued after May 1, 2009, the sixth edition will be used.[7]

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to her employment.[8]

ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to a schedule award. Appellant did not submit any medical reports from a physician explaining how her accepted conditions of contusion and sprain of the right knee lateral collateral ligament caused a permanent impairment to a scheduled member of the body.

Appellant submitted an October 28, 2010 report from Dr. Solomon who provided an impairment rating based upon appellant's "bilateral knee replacement rather than the contusion since this was [an] insignificant event and her primary disability is the bilateral knee replacement surgery." Dr. Solomon indicated that the "contusion to the right knee caused chronic swelling of her knee." He utilized the A.M.A., *Guides* and opined appellant had a final lower extremity impairment of 25 percent for the right leg and 25 percent to the left leg. However, the Board notes that this impairment rating is based upon injuries which were not accepted as work related. As noted above, a schedule award can be paid only for a condition related to an employment injury. Dr. Solomon indicated that the accepted right knee condition was insignificant and acknowledged that he based his impairment rating on the effects of bilateral knee surgery which was not an employment-related condition. He did not explain how the accepted conditions caused any permanent impairment of the right leg nor did he purport to rate impairment for only the accepted conditions pursuant to the A.M.A., *Guides*. Therefore, Dr. Solomon's report is insufficient to establish that appellant has impairment causally related to her accepted right knee contusion and sprain.[9]

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[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id*. at § 10.404(a).

[7] FECA Bulletin No. 09-03 (issued March 15, 2009).

[8] *Veronica Williams*, 56 ECAB 367, 370 (2005).

[9] Preexisting impairments are to be included in determining the amount of a schedule award. *Beatrice L. High*, 57 ECAB 329 (2006). However, where the claimant has not demonstrated any permanent impairment caused by the

In a March 14, 2011 report, OWCP's medical adviser reviewed the matter and explained that the bilateral total knee replacement performed in March 2007 was not work related and that Dr. Solomon's impairment recommendation was based these nonaccepted surgeries. He noted that the energy imparted to the knee by a contusion would not be sufficient to cause any long-term damage and opined that the contusion was a temporary aggravation of a preexisting condition, was self-limiting and would have resolved within six weeks. The medical adviser concluded that appellant's accepted conditions provided no basis on which to rate any permanent impairment and that appellant's pain and impairment were due to the nonwork-related knee replacement. He explained that the accepted condition was self-limiting and would have resolved with no long-term impairment. The medical adviser determined that appellant had no employment-related permanent impairment. The Board finds that there is no probative medical evidence establishing that appellant sustained permanent impairment of her right leg causally related to her accepted right knee sprain and contusion.

Appellant has the burden of proof to establish that the condition for which a schedule award is sought is causally related to his or her employment. She has not established entitlement to a schedule award based on permanent impairment of her right leg due to the accepted injury.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that OWCP properly denied appellant's claim for a schedule award.

accepted occupational exposure, the claim is not ripe for consideration of any preexisting impairment. *Thomas P. Lavin*, 57 ECAB 353 (2006).

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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