United States Department of Labor
Employees' Compensation Appeals Board

S.L., Appellant	)	
and	)	**Docket No. 12-595**
	)	**Issued: July 25, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Long Beach, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 24, 2012 appellant filed a timely appeal from a September 27, 2011 schedule award decision of the Office of Workers' Compensation Programs (OWCP). 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 the schedule award decision.

ISSUE

The issue is whether appellant met her burden of proof to establish more than 21 percent impairment of the left lower extremity for which she received a schedule award.

On appeal appellant asserts that she is entitled to a schedule award for the accepted bilateral plantar fasciitis condition.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On September 20, 2002 OWCP accepted that appellant, then a 38-year-old distribution clerk, sustained employment-related bilateral plantar fasciitis. It also accepted mild degenerative osteoarthritis and localized primary osteoarthritis of the left knee. On June 23, 2003 appellant underwent shock wave therapy to the right heel. She returned to work on July 15, 2003. By decision dated June 17, 2005, OWCP accepted that appellant sustained a recurrence of disability on June 9, 2004.[2] Appellant received appropriate compensation and returned to modified full-time duty on June 6, 2006.

On January 29, 2008 Dr. David A. Lewis, a Board-certified orthopedic surgeon, performed a total left knee arthroplasty and appellant was placed on the periodic compensation rolls. In a preoperative physical examination, Dr. R. Steven Pulverman, an attending osteopath, advised that, except for the left knee, the extremities were without pain. He went on to note that she had pain in both ankles and feet "and this knee is a compensatory degenerative area secondary to this other problem." Appellant returned to modified duty on April 10, 2008. In a May 6, 2009 report, Dr. Lewis noted appellant's report that her left knee was doing well and that she had tolerable pain in the right knee. He diagnosed status post left total knee arthroplasty and degenerative joint disease of the right knee and advised that she could continue activities as tolerated.

On April 22, 2011 appellant filed a schedule award claim and submitted a March 8, 2011 report in which Dr. Lewis provided physical examination findings and diagnosed status post left total knee replacement and degenerative joint disease of the right knee. Dr. Lewis advised that under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[3] there was no impairment due to limb length discrepancy, anklylosis, amputation, peripheral nerve injury, vascular causalgia, range of motion deficit, gait derangement or strength deficit. He concluded that in accordance with Table 17-35, appellant had 15 percent whole person impairment due to her left knee impairment, based on a good result from her knee replacement.

By letter dated May 17, 2011, OWCP informed appellant that, effective May 1, 2009, the sixth edition on the A.M.A., *Guides* was used to evaluate impairment and asked that she provide a medical report based on the sixth edition.[4] No response was received. On July 21, 2011 OWCP asked its medical adviser to review the record, including Dr. Lewis' March 8, 2011 report and provide an impairment evaluation in accordance with the sixth edition of the A.M.A., *Guides*.

In an August 3, 2011 report, Dr. Christopher R. Brigham, Board-certified in family and occupational medicine and an OWCP medical adviser, reviewed the record including Dr. Lewis' March 8, 2011 report. He advised that maximum medical improvement was reached on

[2] OWCP had initially denied the recurrence claim in a December 29, 2004 decision.

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

[4] *Id*. (6th ed. 2008).

March 8, 2011 and that in accordance with Table 16-3, Knee Regional Grid, of the sixth edition of the A.M.A., *Guides*, appellant had a class 2 impairment because she had a good result of her left total knee replacement with no motion loss or instability. Dr. Brigham found a default grade of 25 percent with a zero modifier for functional history because appellant had no gait abnormality, a zero modifier for physical examination because examination was unremarkable, and no modifier for clinical studies because there were no applicable studies. He applied the net adjustment formula and concluded that appellant had a 21 percent left lower extremity impairment due to the total knee replacement. With regard to the accepted bilateral plantar fasciitis, Dr. Brigham advised that, under Table 16-2, Foot and Ankle Regional Grid, appellant had no impairment due to plantar fasciitis because there were no significant objective findings on examination or radiographic studies at maximum medical improvement. He advised that Dr. Lewis did not report that appellant had complaints regarding her feet. Dr. Brigham concluded that appellant had a 21 percent impairment of the left lower extremity and no impairment on the right.

By decision dated September 27, 2011, appellant was granted a schedule award for a 21 percent impairment of the left lower extremity and 0 percent impairment on the right, for a total of 60.48 weeks, to run from March 8, 2011 to May 4, 2012.

LEGAL PRECEDENT

The schedule award provision of FECA,[5] and its implementing federal regulations,[6] 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.[7] For decisions issued after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.[8] For decisions issued after May 1, 2009, the sixth edition will be used.[9]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[10] Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id*. at § 10.404(a).

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

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

[10] A.M.A., *Guides*, *supra* note 4 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

Clinical Studies (GMCS).[11] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[12] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[13]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.[14]

ANALYSIS

The Board finds that appellant did not establish that she has greater than 21 percent left lower extremity impairment.

In his March 8, 2011 report, Dr. Lewis provided an impairment rating for appellant's left lower extremity in accordance with the fifth edition of the A.M.A., *Guides*. As noted above, for decisions issued after May 1, 2009, the sixth edition will be used.[15] On May 17, 2011 OWCP informed appellant of this requirement and asked that she inform her physician to provide an appropriate report. Appellant did not respond. OWCP then appropriately forwarded Dr. Lewis' report to an OWCP medical adviser for review.

The sixth edition classifies the lower extremity impairment by diagnosis, which is then adjusted by grade modifiers.[16] In his August 3, 2011 report, Dr. Brigham applied the appropriate tables and grading schemes to the A.M.A., *Guides*. He indicated that he had utilized Table 16-3, Knee Regional Grid, of the sixth edition of the A.M.A., *Guides* and identified a total knee replacement as a diagnosis. Dr. Brigham advised that appellant had a class 2 impairment based on a good result of the total knee replacement. He identified modifiers of one for functional history and physical examination and found no modifier for clinical studies. Dr. Brigham calculated an adjustment of -4 using the net adjustment formula which, yielded a 21 percent permanent disability of each lower extremity.[17] The record does not contain an additional medical report that rates appellant's left lower extremity in accordance with the sixth edition of the A.M.A., *Guides*.

[11] *Id*. at 494-531.

[12] *Id*. at 521.

[13] *Id*. at 23-28.

[14] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

[15] *Supra* note 9.

[16] *Supra* note 4 at 497-500.

[17] *Id*. at 521.

As to appellant's argument on appeal that she is entitled to a schedule award for the accepted bilateral plantar fasciitis condition, there is no medical evidence of record addressing whether she has a permanent impairment due to this condition.

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 appellant has a 21 percent left lower extremity impairment for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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