U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTINE CRISPI and DEPARTMENT OF LABOR,
OFFICE OF THE SOLICITOR, New York, NY

Docket No. 01-299; Submitted on the Record;
Issued March 11, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has greater than a 34 percent permanent loss of use of her right leg.

Appellant sustained injuries to her right knee on November 1, 1977 when she twisted it and on August 7, 1984 when she banged it into a desk drawer. The Office of Workers' Compensation Programs accepted that she sustained a patellar fracture with arthritis and that she aggravated the chondromalacia of her right knee.

Appellant underwent surgeries on her right knee on November 18, 1977, December 1, 1982, October 30, 1984, January 23, 1987, November 1, 1993 and July 10, 1988. The last surgery consisted of a partial medial and partial lateral meniscectomy and a partial synovectomy.

On July 27, 1979 the Office issued appellant a schedule award for a 15 percent permanent loss of use of her right leg.

Upon appellant's inquiry about an increased schedule award, the Office on April 5, 2000 referred appellant, prior medical records and a statement of accepted facts to Dr. Ernest Barash, a Board-certified orthopedic surgeon, for an evaluation of the permanent impairment to her right leg. In a report dated May 18, 2000, Dr. Barash noted that appellant used canes and occasionally a brace and that her right knee was completely unstable and "wobbly" going into both varus and severe valgus position. He stated that the range of motion was from 10 to 90 degrees, that there was marked atrophy of the thigh and that x-rays showed severe 3 compartment degeneration. Dr. Barash stated that application of the 4th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) resulted in a 57 percent permanent impairment: 20 percent for restricted flexion, 9 percent for contracture, 14 percent for varus wobble and 14 percent for valgus. He also stated that her degree of pain would give her a 16 percent deficit using Table 20, that her loss of muscle power would be a 14 percent deficit using Table 21 and that total impairment of the right leg was 87 percent.

On June 6, 2000 an Office medical adviser requested that Dr. Barash submit an addendum report addressing whether appellant's extension was 10 or minus 10 degrees, providing the degrees of varus or valgus angulation and explain his use of Tables 20 and 21 in conjunction with the appropriate nerve from Table 68.

In a report dated June 15, 2000, Dr. Barash stated that appellant could not fully extend her knee, having lost her range from 0 to 10 degrees and that he assigned appellant to class 2 in Table 20 and grade 4 in Table 21. Dr. Barash also stated: "As to norms on valgus range, long before you get to the full limit [appellant's] pain far exceeded her tolerance and you have to stop the motion. Varus was well over 12 degrees and valgus over 20 degrees. How far would require examination under anesthesia."

On September 4, 2000 an Office medical adviser reviewed Dr. Barash's reports and found several inaccuracies in his calculations regarding Dr. Barash's estimate of impairment. He stated:

> "Although I asked for clarifications using the 4th edition A.M.A., *Guides to the Evaluation of Permanent Impairment*, the responses offered by Dr. Barash in an addendum letter dated June 15, 2000, indicate that he does not correctly understand the use of the 4th edition A.M.A., *Guides*.
>
> "As examples, he claims to measure the full varus and valgus malalignment would require that the claimant be put under anesthesia to overcome the impact that pain has on reducing Dr. Barash's ability to measure these malalignments. The varus and valgus angulations, if present, are measured with weight bearing and would not both be present -- i.e., either there is varus or valgus malpositioning on weight bearing; both would not be present in the knee at the same time.
>
> "Dr. Barash also in the addendum report indicates that he gave ratings for pain and weakness solely using Tables 20 and 21 on p. 151. He, even after receiving the addendum letter request from myself, did not appear to understand that a grade from Table 20 and 21 must in this instance be combined with the maximums for the affected nerve from Table 68.
>
> "Dr. Barash's report and addendum report do not permit a basis to accept the input he has offered regarding the impairment rating.
>
> "Thus, as instructed in FECA Bulletin 96-17, using Dr. Barash's input and deleting his incorrect uses of the [A.M.A.,] *Guides*, a rating is offered which, based upon his input, can only be offered using the ROM [range of motion] model.
>
> "I am deleting the ratings he gave for varus and valgus positioning of the knee as it is clear that Dr. Barash did not make these measurements with the claimant weight bearing but attempted to offer ratings subsequent to stressing the knee in varus and valgus positionings.

"Using the ROM in flexion and extension reported in conjunction with Table 41 p. 3/78, the ratings are found in the 2nd column.

"Thus:

Flexion: 90 degrees -- 10 percent

Extension: 10 degrees -- 20 percent

"No additional rating for pain is warranted. In the 4th edition A.M.A., *Guides* on p. 3/13 it clearly indicates, 'in general, the impairment percents shown in this chapter make allowance for the pain that may accompany the musculoskeletal system impairments.'

"Dr. Barash offered a Grade level 4 for weakness from Table 21. Consulting Table 21, p. 4/151, a [G]rade 4 may permit a percent of motor deficit from 1 [percent] up to 25 percent. Dr. Barash did not indicate the calculation process but in the report of May 18, 2000 offered 14 percent from Table 21.

"Taking this to be the grade, the grade from Table 21 must be multiplied by the nerve from Table 68 p.3/89 which is responsible for the motor innervation of the knee. In practice the femoral nerve is used for this purpose.

"The maximum lower extremity rating in the distribution of the femoral nerve is 37 percent.

"Using the calculation parameters in Table 21(b)(5) the impairment due to weakness is:

37 percent x 14 percent = 5.18 percent.

"FECA Memorandum No. 49 requires that this rating be rounded off to 5 percent.

"The 10 percent and 20 percent impairments due to knee ROM restrictions must be added.

"The 30 percent for ROM restrictions is then combined with 5 percent for weakness using the Combined Values Chart, pp. 322-324. Thus: 30 percent combined with 5 percent yields 34 percent of the right lower extremity."

The Office medical adviser concluded that appellant was entitled to an additional 19 percent in addition to the 15 percent previously awarded.

On September 14, 2000 the Office issued appellant a schedule award for a 19 percent permanent loss of use of her right leg, noting that it had previously issued her a schedule award for a 15 percent permanent impairment.

The Board finds that the case is not in posture for a decision.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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.

Dr. Barash's conclusion that appellant had an 87 percent permanent impairment of her right leg is not consistent with proper usage of the A.M.A., *Guides*. His use of percentages from Tables 20 and 21 of Chapter 4 of the 4th edition without multiplying these percentages by the maximum for the affected nerve is contrary to the procedure described by these tables. Table 39 at Chapter 3 titled "Impairment from Lower Extremity Muscle Weakness," appears to be a more appropriate method of evaluating appellant's weakness than Table 21, "Classification and Procedure for Determining Nervous System Impairment Due to Loss of Muscle Power and Motor Function Resulting from Peripheral Nerve Disorders," as appellant's loss of strength is not the result of a peripheral nerve disorder. Dr. Barash, however, did not evaluate appellant's weakness using Table 39. He also did not measure appellant's thigh atrophy, which he described as "marked." Such a measurement would allow consideration of Table 37, "Impairments from Leg Muscle Atrophy."

The Office medical adviser who reviewed Dr. Barash's reports assigned no percentage for varus or valgus deformity, stating that these were to be measured during weight bearing, not while stressing the joint as Dr. Barash did. The A.M.A., *Guides* do not state that varus or valgus are to be measured while weight bearing and the Office medical adviser's letter to Dr. Barash requesting an addendum report did not advise him to measure varus and valgus when bearing weight. As another physician, Dr. Paul E. Levin, reported a mild varus deformity when standing on February 2, 1999, this deformity should have been measured and assigned a percentage. Also not measured, despite reports indicating a narrow joint space on x-rays, was the cartilage interval in appellant's right knee. Such a measurement would allow use of Table 62, "Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals."

As the Office referred appellant for an evaluation of the permanent impairment of her right leg due to her knee condition, it has an obligation to obtain a report on which a proper evaluation and assignment of permanent impairment can be done.[3] Due to the omissions in Dr. Barash's reports, the case will be remanded for referral to an appropriate medical specialist for a report addressing the permanent impairments of appellant's right knee.

---

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *Daniel J. Boyle*, 39 ECAB 254 (1987).

The September 14, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by a decision on the degree of permanent loss of use of appellant's right leg.

Dated, Washington, DC
March 11, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member