



therefore, the Board should adopt the opinion of claimant's treating physician, Dr. Thomas W. Kneidel, who determined that claimant sustained no permanent impairment as a result of the January 9, 2002 accident. Accordingly, respondent and its insurance carrier request the Board to deny claimant's request for permanent disability benefits.

Conversely, claimant contends the May 1, 2003 Award should be affirmed. Claimant argues that there is no expert medical testimony that Dr. Murati failed to properly use the *Guides* in rating claimant's permanent impairment. Claimant points out that Dr. Kneidel, despite testifying last, did not criticize either Dr. Murati's use of the *Guides* or Dr. Murati's techniques for measuring claimant's loss of range of motion.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

There is no dispute that on January 9, 2002, claimant fell at work and broke her left ankle. Likewise, there is no dispute that claimant's accident arose out of and in the course of her employment with respondent. At the time of the accident, claimant worked on respondent's housekeeping staff.

After the accident, claimant received medical treatment from orthopedic surgeon Dr. Thomas W. Kneidel, who immediately placed a cast on claimant's ankle and later sent her to physical therapy.

Claimant missed a little over two months of work before Dr. Kneidel released her to light, sedentary work. When claimant testified at the January 2003 regular hearing, she was working but continued to experience pain in her left ankle along with pain in her left knee. According to claimant, her left knee pain began when she returned to work in a walking cast. Claimant testified, in part:

Q. (Mr. Lee) When did you start having problems with your left knee?

A. (Claimant) When they put me in a walking cast and sent me back to work. I felt I wasn't ready. I was still limping around. I could hardly walk and they wanted me to do my job, which I have three floors to do and I have to carry vacuums up my stairs because we have no elevator at this time.

Q. How often does your left knee bother you?

A. If I walk on it a lot, do an eight-hour shift, it will bother me.<sup>1</sup>

Claimant requests permanent partial disability benefits based upon her functional impairment rating. And the record contains only two opinions regarding the extent of that impairment: Dr. Pedro A. Murati, whom claimant's attorney hired to examine and evaluate claimant, and Dr. Kneidel, who saw claimant approximately six times while treating claimant through April 2002 when the doctor released her from treatment.

Dr. Murati examined claimant in June 2002. At that visit, claimant complained of loss of range of motion in her left ankle and left knee pain that she attributed to working while in a walking cast. As a result of his examination, Dr. Murati diagnosed (1) left ankle pain status post fibular fracture and (2) left knee pain secondary to patellofemoral syndrome due to overcompensation. During his deposition, the doctor also partially attributed claimant's knee symptoms to the walking cast that claimant wore, which added about an inch or two to the height of claimant's leg, and to her weight.

Dr. Murati determined claimant had an 11 percent left lower extremity impairment for loss of range of motion in the left ankle and a five percent impairment for the left knee pain secondary to patellofemoral syndrome, which he combined for a 15 percent left lower extremity impairment. According to Dr. Murati, he used a goniometer and the *AMA Guides* (4th ed.) in assessing claimant's functional impairment.

On the other hand, Dr. Kneidel, who testified after Dr. Murati, opined that claimant's distal fibula had completely healed and that her range of motion was similar to the right non-injured side. Accordingly, Dr. Kneidel determined that claimant had sustained no permanent functional impairment under the *AMA Guides* as a result of the January 2002 accident and resulting ankle fracture. On cross-examination, the doctor acknowledged that he did not measure the range of motion in claimant's left ankle with a goniometer as he observed that the range of motion appeared normal.

Contrary to what claimant had advised Dr. Murati, Dr. Kneidel testified that claimant did not make knee complaints to him during treatment. Consequently, Dr. Kneidel never examined claimant's knee.

The Board is not persuaded that either doctor's opinion regarding claimant's permanent functional impairment is any more persuasive than the other. Consequently, the Board finds that claimant's functional impairment lies somewhere between those extremes. The Board averages Dr. Murati's 15 percent lower extremity rating with Dr.

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<sup>1</sup> R.H. Trans. at 9.

Kneidel's zero percent rating and concludes that claimant has sustained an eight percent functional impairment to the left lower extremity as a direct result of the January 9, 2002 accident. Consequently, claimant is entitled to receive permanent partial disability benefits for the eight percent functional impairment to the left lower extremity.

**AWARD**

**WHEREFORE**, the Board modifies the May 1, 2003 Award and awards claimant permanent disability benefits for an eight percent functional impairment to the left lower extremity.

Leola Berghoefer is granted compensation from The Cura Group, Inc., and its insurance carrier for a January 9, 2002 accident and resulting disability. Based upon an average weekly wage of \$267.15, Ms. Berghoefer is entitled to receive 9.86 weeks of temporary total disability benefits at \$178.11 per week, or \$1,756.16, plus 15.21 weeks of permanent partial disability benefits at \$178.11 per week, or \$2,709.05, for an eight percent permanent partial disability, making a total award of \$4,465.21, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the May 1, 2003 Award that are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Robert R. Lee, Attorney for Claimant
- Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
- Jon L. Frobish, Administrative Law Judge
- Paula S. Greathouse, Workers Compensation Director