

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLENE CHAPMAN)	
Claimant)	
VS.)	
)	
BOEING COMPANY)	Docket Nos. 236,507;
Respondent)	255,928; 268,601
)	
AND)	
)	
INSURANCE CO. STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge (ALJ) Jon L. Frobish on March 5, 2003. The Appeals Board (Board) heard oral argument on August 20, 2003.

APPEARANCES

Lawrence M. Gurney of Wichita, Kansas, appeared for the claimant. Eric K. Kuhn of Wichita, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATION

The Board considered the record and adopts the stipulations that are listed in the Award. Although obviously considered by the ALJ, it should be noted that the record also contains the June 13, 2002 court ordered independent medical report by C. Reiff Brown, M.D.

ISSUES

This appeal involves three separate claims that were consolidated for trial and award purposes. The parties agreed to treat all three claims together as a single accident and stipulated to use July 15, 1998 as the date of accident. The parties also agreed that claimant suffered a compensable injury to her bilateral lower extremities (knees) but respondent and its insurance carrier (respondent) deny that claimant's preexisting low back condition was permanently worsened by her work.

The ALJ awarded claimant permanent partial disability compensation based upon the eight (8) percent functional impairment rating given by her medical expert, board certified physiatrist Pedro A. Murati, M.D. Respondent agrees that Dr. Murati's opinion is the most credible and should be adopted. But respondent points out that during his deposition Dr. Murati's opinion changed to six (6) percent instead of the eight (8) percent functional impairment rating contained in his report.

Conversely, claimant argues that the 19 percent functional impairment rating given by the court ordered independent medical examiner, board certified orthopedic surgeon C. Reiff Brown, M.D. is the more accurate. Respondent, however, counters that Dr. Brown, in his deposition testimony acknowledged that claimant's impairment would only be nine (9) percent if he strictly adhered to the AMA Guides.¹

The nature and extent of claimant's disability, specifically her impairment of function, is the only issue for Board review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board finds that the ALJ's award should be affirmed, but for different reasons. The ALJ found claimant was entitled to an eight (8) percent permanent partial general disability award for her work-related injuries based upon the functional impairment rating of Dr. Murati. The Board finds the modified impairment of function opinions of both medical experts to be credible; that is, the six (6) percent rating by Dr. Murati and the nine (9) percent rating by Dr. Brown. Giving approximately equal weight to both, the Board affirms the eight (8) percent permanent partial disability award.

¹ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*, (4th ed.).

Award

WHEREFORE, the Award entered by Administrative Law Judge Jon L. Frobish dated March 5, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Lawrence M. Gurney, Attorney for Claimant
- Eric K. Kuhn, Attorney for Respondent and Insurance Carrier
- Jon L. Frobish, Administrative Law Judge
- Paula S. Greathouse, Workers Compensation Director