U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL RUSSO and U.S. POSTAL SERVICE, INTERNATIONAL & BULK MAIL CENTER, Jersey City, N.J.

Docket No. 96-1467; Submitted on the Record;
Issued August 7, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained greater than a four percent permanent impairment of the right leg for which he received a schedule award.

On January 10, 1991 appellant, then a 46-year-old distribution clerk keyer, sustained a fractured right tibia and reflex sympathetic dystrophy in the performance of duty when he slipped on ice in the employing establishment parking lot. Appellant sustained a recurrence of disability on August 21, 1991.

In a report dated May 6, 1993, Dr. Ronald Goldberg, provided a history of appellant's condition and findings on examination and opined that appellant had 51 percent permanent impairment of the right lower extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (3rd ed., rev. 1990).

In a memorandum dated October 13, 1993, the Office of Workers' Compensation Programs medical director stated that a schedule award could not be calculated based on Dr. Goldberg's report due to insufficient and inconsistent data.

In a report dated April 8, 1994, regarding an examination on March 29, 1994, Dr. David Weiss, a Board-certified orthopedic surgeon, provided a history of appellant's condition and findings on examination. He stated:

> "Examination of the right knee revealed a well-healed arthroscopy scar. There is tenderness noted over the medial joint space and the medial midline. There is no tenderness noted over the lateral joint space or the lateral midline. There is no effusion noted. There is no instability noted. The Drawer sign is negative. There is quadriceps atrophy noted. Quadriceps muscle weakness was noted at 3/5 on the right. There is mildly positive Valgus stress test noted. There is crepitus noted on active range of motion of the right knee. Range of motion revealed

flexion-extension of 0-75/120 degrees with pain. Quadriceps circumference revealed 49 [centimeters] on the left and 46 [centimeters] on the right.

"Further examination of the right lower extremity revealed marked edema at +2 with discoloration involving the distal 2/3 of the right lower extremity.

"Examination of the right ankle revealed diffuse tenderness tibia tenderness noted over the distal 1/3. There is tenderness noted over the right medial malleolus. There is also tenderness noted over the lateral malleolus. There is effusion noted over the medial and lateral aspects. Range of motion of the right ankle revealed dorsiflexion of 15/20 degrees; plantar flexion of 20/40 degrees; inversion of 5/20 degrees; and eversion of 0/30 degrees. Ankle circumference revealed 27½ [centimeters] on the right and 26 [centimeters] on the left. Dorsi-flexion revealed a grade of 3+/5.

"The lower leg circumference taken at three inches below the knee revealed 41 [centimeters] on the right and 40 [centimeters] on the left...."

Dr. Weiss stated that appellant had a 78 percent impairment of the right lower extremity based on the A.M.A, *Guides* (4th ed., 1993) including a 9 percent permanent impairment for status post medial meniscectomy of the right knee, 17 percent for muscle weakness for the right lower extremity, 13 percent for right thigh muscle atrophy, 20 percent for range of motion impairment of the right knee, 5 percent for marked edema and discoloration involving distal 2/3 of the right lower extremity and 14 percent for loss of range of motion of the right ankle.

In a report dated November 10, 1994, Dr. Ronald E. Gennace, appellant's authorized attending Board-certified orthopedic surgeon, related that appellant had pain intermittently in his right knee as well as stiffness in the right ankle. He stated:

"[Appellant's] right knee motion shows full extension with flexion to 135 degrees. He lacks 10 degrees of flexion compared to his normal left leg. No effusion in the right knee. No ligament laxity. There is some diffuse edema about the leg and he lacks 10 degrees of plantar flexion as well as 10 degrees of inversion compared to his normal left ankle. He is able to heel and toe walk with some difficulty.

"I feel he has a 2 [percent] whole person permanency as far as his right knee is concerned based on loss of motion as well as 5 [percent] whole person permanency due to the right ankle loss of motion. Therefore, according to the [A.M.A., *Guides*] ..., 9 [percent] combined whole person impairment due to injuries sustained on [January 1, 1991]. He reached maximum benefit from treatment on [October 5, 1992]."

In a memorandum dated November 16, 1994, the Office medical director stated that appellant had a 4 percent permanent impairment of the right lower extremity based on Dr. Gennace's report dated November 10, 1994. He stated that appellant had a 0 percent impairment for flexion-extension of 0 to 135 degrees of the right knee based on Table 41 at page

78 of the Fourth Edition of the A.M.A., *Guides*, a 2 percent permanent impairment for a partial medial meniscectomy based on Table 64 at page 85, a 0 percent impairment for intermittent pain, a 0 percent permanent impairment of the right ankle for -10 of plantar flexion based upon Table 42 at page 78 and a 2 percent permanent impairment for a -10 degree inversion of the right ankle based on Table 43 at page 78.

By decision dated March 24, 1995, the Office granted appellant a schedule award based upon a 4 percent permanent impairment of the right leg.

By letter dated April 3, 1995, appellant, through his representative, requested an oral hearing before an Office hearing representative.

On November 1, 1995 a hearing was held before an Office hearing representative at which time appellant testified.

The record shows that following the hearing the case was referred to an Office medical adviser who reviewed all of the medical evidence of record and, in a December 8, 1995 memorandum, stated that the four percent rating determined by the Office medical director was correct.

By decision dated January 19, 1996, the Office hearing representative affirmed the Office's March 24, 1995 decision.

The Board finds that appellant sustained no more than a four percent permanent impairment of the right leg for which he received a schedule award.

An employee seeking compensation under the Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,[2] including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[3]

Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[4] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[5]

---

[1] 5 U.S.C. §§ 8101-8193.

[2] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] 5 U.S.C. § 8107(a).

[5] *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."[6] This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[7]

In this case, the Office based its determination that appellant had sustained a four percent permanent impairment of the right leg upon the findings in the November 10, 1994 report of appellant's attending Board-certified orthopedic surgeon, Dr. Gennace. He provided specific physical findings on examination but he stated his opinion as to appellant's permanent impairment in terms of "whole person" impairment. A schedule award is not payable under section 8107 of the Act for an impairment of the whole person.[8] The Office medical director applied the findings of Dr. Gennace to the A.M.A., *Guides.* He stated that appellant had a 0 percent impairment for flexion-extension of 0 to 135 degrees of the right knee based on Table 41 at page 78 of the Fourth Edition of the A.M.A., *Guides*, a 2 percent permanent impairment for a partial medial meniscectomy based on Table 64 at page 85, a 0 percent impairment for intermittent pain, a 0 percent permanent impairment of the right ankle for -10 of plantar flexion based upon Table 42 at page 78 and a 2 percent permanent impairment for a -10 degree inversion of the right ankle based on Table 43 at page 78 and the Office granted appellant a schedule award for a 4 percent impairment of the right leg.

As the report of the Office medical adviser provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[9]

The opinion of Dr. Weiss in his April 8, 1994 report is of limited probative value in that Dr. Weiss failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.[10] He stated that he had based his opinion regarding permanent impairment on the fourth edition of the A.M.A., *Guides* but his percentages are not consistent with the *Guides*. For example, Dr. Weiss assigned a nine percent impairment for a medial meniscectomy but this does not correspond to the applicable portion of the *Guides*, Table

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); *see John H. Smith*, 41 ECAB 444, 448 (1990).

[7] *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

[8] *See Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

[9] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

[10] *See James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

64 at page 85. Furthermore, the findings used as the basis for Dr. Weiss's opinion regarding permanent impairment were obtained in March 1994, eight months prior to appellant's examination by Dr. Gennace. Therefore, the findings obtained by Dr. Weiss were not as recent as those obtained by Dr. Gennace and were not sufficient to form the basis for the Office's schedule award determination.

The January 19, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 7, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member