

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TERRENCE L. RICE and U.S. POSTAL SERVICE,  
POST OFFICE, Des Moines, Iowa

*Docket No. 96-2104; Submitted on the Record;  
Issued December 11, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has greater than a two percent impairment of his right lower extremity, for which he has received a schedule award.

On September 15, 1994 the Office of Workers' Compensation Programs accepted that appellant sustained a torn medial meniscus in his right knee, for which he underwent a partial medial meniscectomy on November 1, 1994.

On April 4, 1995 Dr. Sinesio Misol, a Board-certified orthopedic surgeon, who operated on appellant's knee, noted that appellant could no longer jog like he used to, that he had crepitus and pain when going up or down stairs or when squatting, and that he had minimal enlargement of the right knee circumferentially. He noted right knee range of motion from 0 to 120 degrees with crepitus, and indicated that the medial and lateral tendons had good stability along the posterior medial joint line. Dr. Misol opined that appellant had at least a 10 percent permanent impairment of the right lower extremity and opined that the chances of appellant developing early degenerative arthritis were better than 70 percent.

Thereafter appellant requested a schedule award for his injury residuals.

By report dated October 6, 1995, Dr. Misol restated his impairment opinion and indicated that appellant had right knee stiffness, aches and pains, and symptomatic changes with weather fluctuations. On December 1, 1995 he noted that right knee x-rays demonstrated no evidence that the trauma of surgery caused any arthritis, but noted that appellant's right thigh appeared to have three-fourths to one inch of atrophy circumferentially when compared with the left.

On March 25, 1996 the Office referred appellant for a second opinion on his degree of right knee permanent impairment to Dr. Charles Denhart, a Board-certified orthopedic surgeon. The Office requested that the impairment rating be provided in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

By report dated April 15, 1996, Dr. Denhart noted appellant's symptoms of pain that interfered with some activity and crepitus, indicated that his gait was normal, noted normal deep tendon reflexes and normal strength on manual muscle testing, noted normal sensation, stability, and the absence of effusion, and indicated that range of motion was normal. Using the A.M.A., *Guides*, Table 64, p.85, Dr. Denhart found that appellant had a two percent impairment as a diagnosis-based estimate for a partial meniscectomy. Then, using Table 20, p.151, he estimated appellant's pain was a 50 percent sensory impairment, noted that the femoral nerve had a maximum impairment of 2 percent of the lower extremity, and calculated that 50 percent of 2 percent was 1 percent. Thereafter he combined the impairment for a diagnosis-based estimate with impairment due to pain and concluded that appellant had a three percent permanent impairment of his right lower extremity. Extremity atrophy was not measured or considered.

On May 1, 1996 an Office medical adviser, Dr. Daniel Zimmerman, reviewed Dr. Denhart's findings and opined that appellant had a two percent impairment of his right lower extremity according to the diagnosis-based estimates in Table 64. Dr. Zimmerman noted that Table 64 estimates were "stand alone" ratings, according to Federal Employees' Compensation Act, Bulletin 95-17, and indicated that Dr. Denhart's one percent rating for pain must be deleted because that factor was considered in the diagnosis-based impairment rating.

By decision dated May 7, 1996, the Office granted appellant a schedule award for a two percent permanent impairment of his right lower extremity.

The Board finds that appellant has no more than a two percent impairment of his right lower extremity.

The schedule award provision of the Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>3</sup> However, neither the Act nor its regulations specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.<sup>4</sup>

Dr. Misol reported a 10 percent permanent impairment of the right lower extremity as a result of appellant's partial meniscectomy. Board precedent is well settled, however, when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based upon the application of the A.M.A., *Guides*, the Office is correct to

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<sup>1</sup> 5 U.S.C § 8101 *et seq.*; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> *Thomas D. Gauthier*, 34 ECAB 1060 (1983).

follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>5</sup> Board cases are clear that if the attending physician does not utilize the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of any permanent impairment.<sup>6</sup> Dr. Misol did not indicate that he applied the A.M.A., *Guides* in assessing appellant's permanent impairment due to meniscal loss at 10 percent. He simply stated in two reports that appellant had a 10 percent permanent impairment of the right lower extremity. Accordingly, those reports are of diminished probative value on the issue of appellant's total percentage impairment rating.

The Board notes that Dr. Denhart provided a report in which he found a two percent impairment of the lower extremity based on a "diagnosis-based" estimate of impairment for appellant's partial meniscectomy. He provided an additional rating for pain, and concluded that appellant had a three percent impairment of his right lower extremity.

The Board notes that the A.M.A., *Guides* section on using "diagnosis-based" estimates of impairment notes that some impairment estimates are assigned more appropriately on the basis of a diagnosis than on physical findings on examination.<sup>7</sup> The Board notes that the diagnosis-based estimate for a partial medial meniscectomy is two percent of the lower extremity, which is inclusive of impairment due to pain and atrophy. For this reason, Dr. Zimmerman properly applied the A.M.A., *Guides* to the report of Dr. Denhart to find that appellant's partial medial meniscectomy represents a two percent impairment of the right lower extremity for which he received a schedule award. There is no other evidence of greater impairment.

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<sup>5</sup> See *Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

<sup>6</sup> See *Thomas P. Gauthier*, *supra* note 4; *Raymond Montanez*, 31 ECAB 1475 (1980).

<sup>7</sup> A.M.A., *Guides*, p.84. The A.M.A., *Guides* note that the examining physician should decide whether diagnostic or examination criteria best describe the impairment for the specific patient.

The decision of the Office of Workers' Compensation Programs dated May 7, 1996 is hereby affirmed.

Dated, Washington, D.C.  
December 11, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member