

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVE F. NENICHKA and U.S. POSTAL SERVICE,
POST OFFICE, Whitehaven, PA

*Docket No. 00-1618; Submitted on the Record;
Issued April 9, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

The Board has reviewed the case on appeal and finds that appellant has no more than a two percent permanent impairment of his right lower extremity.

Appellant, a 36-year-old city carrier, filed a notice of traumatic injury on April 30, 1998 alleging that he injured his knee in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for sprained right knee. The Office authorized arthroscopy on June 16, 1998. Appellant requested a schedule award on February 20, 1999. By decision dated March 7, 2000, the Office granted appellant a schedule award for a two percent permanent impairment of his right lower extremity.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴

In this case, Dr. John A. Kline, a physician Board-certified in physical medical and rehabilitation, completed a report on October 8, 1999. He reviewed the medical records and

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ A.M.A., *Guides* (4th ed. 1993).

⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

performed a physical examination. Dr. Kline noted that appellant underwent a partial medial meniscectomy to repair a tear in the posterior medial horn of the medial meniscus which involved approximately 50 percent of the thickness. He noted that appellant had some dull ache and no evidence of atrophy. Dr. Kline stated that, in accordance with the A.M.A., *Guides*, appellant had 4 percent impairment of the whole person or 10 percent impairment of the lower extremity.

The Office medical adviser reviewed Dr. Kline's report on January 18, 2000 and noted that Table 64 of the A.M.A., *Guides* provides for two percent permanent impairment of the lower extremity due to a partial medial or lateral meniscectomy.⁵ He noted that appellant would be entitled to four percent impairment to the lower extremity only if he had both partial lateral and partial medial meniscectomy. As there is no evidence in the record to support that appellant underwent meniscectomy to repair damage to his lateral meniscus, he is not entitled to the additional impairment rating mentioned in Dr. Kline's report.

The Board further notes that appellant is not entitled to an impairment rating for injury to the whole person under the Act. The Act provides only for compensation for certain scheduled members not to the body as a whole.⁶ Furthermore, appellant would not be entitled to a schedule award for both impairment to the whole person and impairment to the lower extremity. Under the Act, appellant is only entitled to the ratable impairment under the A.M.A., *Guides* attributable to his right lower extremity, the accepted schedule member.

The March 7, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 9, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ A.M.A., *Guides*, 85, Table 64.

⁶ 5 U.S.C. § 8107.