

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARTON E. WILLUWEIF and U.S. POSTAL SERVICE,  
POST OFFICE, Spearfish, SD

*Docket No. 01-29; Submitted on the Record;  
Issued August 23, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

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

On February 4, 1991 appellant, then a 35-year-old mail carrier, filed a traumatic injury claim for an injury to his right knee on February 2, 1991 when he slipped on ice.<sup>1</sup> The Office of Workers' Compensation Programs accepted the claim for right knee strain.

On December 3, 1997 appellant filed an occupational disease claim alleging that the cartilage in his left knee was probably torn due to the walking required in his job.<sup>2</sup> The Office accepted aggravation of preexisting left knee derangement and authorized surgery.

On April 17, 1998 appellant filed a claim for a schedule award on his left knee.

In a report dated June 24, 1998, Dr. Bryan D. Den Hartog, appellant's attending Board-certified orthopedic surgeon, concluded that appellant had a seven percent impairment of his left lower extremity using Table 64 at page 85 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> ed. Dr. Den Hartog indicated that appellant had a significant tear of the medial meniscus and that arthritic changes were present on the cartilage that covered the end of his thigh bone."

On January 19, 1999 the Office issued an award for a seven percent impairment of the left lower extremity.

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<sup>1</sup> This was assigned claim number 12-0120974.

<sup>2</sup> This was assigned claim number 12-0172752. Appellant filed a claim for an injury sustained on January 11, 1999 which was assigned claim number 12-0180307.

In an undated letter received by the Office on April 11, 1999, appellant requested reconsideration and submitted a March 31, 1999 report by Dr. Den Hartog, who concluded that appellant had a 20 percent impairment of the left lower extremity based upon his estimate that appellant has 2 millimeter (mm) of cartilage left on his medial compartment. Using Table 62 at page 83, the physician found a 20 percent impairment of the left lower extremity.

In a May 3, 1999 report, the Office medical adviser noted that x-rays must be used to determine impairment ratings from Table 62.

In a letter dated May 10, 1999, Dr. Den Hartog stated that appellant's March 31, 1999 impairment rating was based on x-rays taken on November 24, 1997.

In a May 20, 1999 report, the Office medical adviser advised that an increase in appellant's schedule award was unwarranted unless current x-ray measurements according to the A.M.A., *Guides* were provided.

By merit decision dated June 16, 1999, the Office denied appellant's request for reconsideration, finding that the evidence of record failed to support that he was entitled to a 20 percent impairment rating for his left lower extremity.

By letter dated July 12, 1999, appellant requested reconsideration and submitted a June 28, 1999 report from Dr. Den Hartog, who noted that standing and lateral x-rays of the left knee were done and appellant had an impairment rating of 20 percent based upon Table 62 at page 83 of the A.M.A., *Guides* (4<sup>th</sup> ed.).

By merit decision dated August 3, 1999, the Office denied appellant's request for reconsideration.

In treatment notes dated May 21 and December 27, 1999, Dr. Den Hartog noted that lateral knee x-rays and a sunrise view were done again on December 27, 1999 and the May 21, 1999 x-rays showed a "significant-narrowing of the medial compartment." He concluded in January 12, 2000 treatment notes that appellant had a 20 percent of impairment of his left lower extremity based on recent x-rays.

In a letter dated February 9, 2000, Dr. Den Hartog noted that x-rays taken on December 27, 1999 still showed "the arthritic changes that were very similar to the x-ray findings on May 21, 1999." Next, the physician indicated that "the cartilage space in the medial compartment in his right knee has not changed significantly since May 1999."<sup>3</sup>

In a March 31, 1999 report, Dr. Den Hartog concluded that appellant had a 20 percent permanent impairment of the left lower extremity utilizing Table 62 at page 83 of the A.M.A., *Guides*. In support of his rating, the physician estimated "that he has a two mm cartilage remaining on the medial compartment."

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<sup>3</sup> Dr. Den Hartog's referral to the right knee is a typographical error as his treatment notes refer to the left knee in his impairment rating.

By letter dated July 17, 2000, appellant requested reconsideration and submitted a June 20, 2000 report by Dr. Steven K. Goff, an attending Board-certified physiatrist, who noted that Dr. Den Hartog's 20 percent impairment rating was correct. He further noted:

“Also probably pertinent here is that there are at least three conditions for which a permanent partial impairment could be rendered here. Dr. Den Hartog did take the measurement of the joint, but also the [A.M.A.,] *Guides* to the permanent partial impairment indicate that a meniscal tear and arthritis of the palatal femoral joint also do qualify for impairments. In the case of the palatal femoral joint this would also stand by itself with a 10 percent impairment and the meniscal tear would also stand for a 10 percent impairment.”

In response to a July 24, 2000 Office inquiry, the Office medical adviser stated that no x-ray measurements were provided as required by Table 62 at page 83. The Office medical adviser then referred to Table 64, page 85 to note that there was “a 10 percent lower extremity rating for partial medial or lateral meniscus tear.”

By merit order dated July 28, 2000, the Office denied appellant's request for reconsideration.

The Board finds that appellant has no more than a seven percent permanent impairment of his left lower extremity.

Section 8107 of the Federal Employees' Compensation Act<sup>4</sup> 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. 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*<sup>5</sup> as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>6</sup>

In this case, Dr. Den Hartog stated that he used Table 62, page 83, “arthritis impairments based on roentgenographically determined cartilage intervals,” in determining that appellant had a 20 percent permanent impairment of his left lower extremity, yet the record is devoid of any postoperative radiographic evidence determining such cartilage intervals. Therefore, the contents of Table 62 are not applicable in this case.<sup>7</sup> Consequently, Dr. Den Hartog's determination of appellant's left lower extremity permanent impairment is not in accordance with the A.M.A., *Guides* and is, therefore, of reduced probative value in establishing the degree of appellant's permanent impairment.

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<sup>4</sup> 5 U.S.C. §§ 8101-8193, § 8107.

<sup>5</sup> A.M.A., *Guides* (3<sup>d</sup> ed. rev., 1990).

<sup>6</sup> A. *George Lampo*, 45 ECAB 441, 443 (1994).

<sup>7</sup> A.M.A., *Guides*, at 83; *Thomas L. Iverson*, 50 ECAB \_\_\_\_ (Docket No. 98-446, issued August 5, 1999); *John M. Gonzales, Jr.*, 48 ECAB 357 (1997).

On May 13, 1999 the Office medical adviser reviewed Dr. Den Hartog's findings of indices of impairment, which included pain, weakness and loss of range of motion and, using the A.M.A., *Guides* with the specific applicable tables and grading schemes identified, properly calculated that appellant had a seven percent permanent impairment of his left lower extremity. The second Office medical adviser reviewed Dr. Goff's report, which concurred with Dr. Den Hartog's 20 percent impairment rating, noting that Table 62 could be used because there was no supporting x-ray in the file.

The second Office medical adviser noted that Table 64 at page 85 provided for a 10 percent impairment rating for a partial or lateral meniscal tear. However, Table 64 provides for a 10 percent impairment rating when there is both a partial medial and lateral meniscectomy. The record does not contain any evidence that there is a tear in both the lateral and medial meniscus and the second Office medical adviser indicated that this percentage was for either a partial or lateral meniscal tear. As the first Office medical adviser's opinion was based on the proper application of the A.M.A., *Guides*, it constitutes the weight of the medical evidence of record in establishing appellant's degree of permanent impairment.<sup>8</sup>

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 28, 2000 is hereby affirmed.

Dated, Washington, DC  
August 23, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>8</sup> Board precedent is well settled, however, that when an attending physician's report gives an estimate of permanent impairment and mentions the A.M.A., *Guides*, but does not base that estimate on correct application of specifically identifiable sections, grading schemes, tables or figures, the Office is correct to follow the advice of its medical adviser or consultant where he or she has properly applied the A.M.A., *Guides*; see *Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980). Board case law is clear that if the attending physician does not properly use the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of any permanent impairment; see *Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Raymond Montanez*, 31 ECAB 1475 (1980).