

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSE T. GOMEZ and U.S. POSTAL SERVICE,
POST OFFICE, Burlingame, CA

*Docket No. 00-864; Submitted on the Record;
Issued January 29, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

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

On September 29, 1997 appellant, then a 54-year-old clerk, filed a claim for a traumatic injury (Form CA-1) alleging that on that day he injured his right knee while in the performance of duty.¹ Appellant stopped work on September 30, 1997.

On October 29, 1997 the Office of Workers' Compensation Programs accepted appellant's claim for "right knee ligamental (anterior cruciate ligament, medial collateral ligament), medial meniscus tears" and authorized surgical repair.

In an attending physician's supplemental report dated January 7, 1998, Dr. Dirk R. Diefendorf, appellant's treating physician and Board-certified orthopedic surgeon, reported that appellant was recuperating from right knee surgery involving the anterior cruciate ligament and medial meniscus. He noted that appellant would be in physical therapy for 2 to 3 weeks and that he was disabled from regular work for 90 days or longer.

In a medical report dated June 4, 1999, Dr. Diefendorf stated that upon examination appellant had excellent range of motion with a positive Lachman trace and that his medial collateral ligament revealed a maximum trace-positive opening at 30 degrees of flexion. He released appellant from his care with no disability.

On July 21, 1999 the Office referred appellant to Dr. Diefendorf for a disability rating.

In a medical report dated August 30, 1999, Dr. Diefendorf stated that the date of appellant's maximum medical improvement of the right lower extremity was June 4, 1999, that

¹ Appellant incorrectly dated the claim September 28, 1997 vice September 29, 1997.

he had mild pain or discomfort, that he had no weakness but that he did have a one-half centimeter of atrophy on the right quadriceps when compared with the left quadriceps. With respect to the intensity of appellant's pain, Dr. Diefendorf stated that appellant's related "mild central nerve pain ... especially after running more than three to four miles per day or prolonged squatting or ladder work. Subjectively he feels he is at least 80 percent of normal now." Range of motion findings of the right knee were 150 degrees of flexion, 0 degrees of extension. He also noted zero ankylosis. Dr. Diefendorf further stated that appellant had mild residual symptoms in his anterior cruciate ligament with a positive Lachman's test. He noted that appellant used a brace for sports only and added that there was no loss of shock absorption in the meniscus.

On September 9, 1999 the Office referred the case to Dr. Leonard A. Simpson, the Office medical adviser and a Board-certified orthopedic surgeon.

In a medical report dated September 14, 1999, Dr. Simpson determined that appellant had a nine percent impairment of the right lower extremity. He initially graded appellant based on pain complaints describing them as grade II as found in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and found a 25 percent grade of a maximal 7 percent femoral nerve equivalent, which he rounded off to a 2 percent impairment. Based on the lack of positive findings for weakness and noting a 0.5 centimeter loss of right quadricep atrophy, Dr. Simpson stated that appellant had no ratable impairment for weakness. He also calculated appellant's award by using the Diagnosed Based Estimates. Based on appellant's positive Lachman and trace positive openings in the medial collateral ligament as noted in the June 4, 1999 medical report from Dr. Diefendorf, he determined that appellant had a seven percent impairment due to ligament instability. Dr. Simpson further found that appellant's meniscal repair was a 2 percent impairment based on Table 64 of the A.M.A., *Guides*. He then relied on the Combined Values Chart to combine a seven percent impairment with a two percent impairment to find a nine percent impairment.

By decision dated September 27, 1999, the Office awarded appellant a nine percent impairment for the right lower extremity.

The Board finds that appellant is entitled to no more than nine percent impairment of the right lower extremity for which he received a schedule award.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation that are to be paid for permanent loss of use of the members of the body that are listed in the schedule. The Act does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. However, as a matter of administrative practice, the Board stated: "For consistent results and to ensure equal justice under the law to all claimants, good administrative practice, necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants."

The Office has adopted and the Board has approved of the A.M.A., *Guides* as the uniform standard applicable to all claimants.²

If appellant's physician does not use the A.M.A., *Guides* to calculate the degree of permanent impairment, it is proper for an Office medical adviser to review the case record and to apply the A.M.A., *Guides* to the examination findings reported by the treating physician.³ In the present case, Dr. Diefendorf did not calculate an impairment rating of appellant's right lower extremity. On the other hand, Dr. Simpson, the Office medical adviser, was the only physician of record who calculated appellant's impairment pursuant to the A.M.A., *Guides*. The Office medical adviser properly noted that Table 64 of the A.M.A., *Guides* provided an impairment value of 7 percent for mild cruciate ligament laxity and an impairment value of 2 percent for a partial medial meniscectomy.⁴ He then relied on the Combined Values Chart to determine that appellant had a nine percent impairment of the right lower extremity.⁵ Dr. Simpson properly calculated appellant's right lower extremity impairment pursuant to the A.M.A., *Guides* and there is no medical evidence of record that appellant has more than a nine percent permanent impairment of the right lower extremity. He reviewed Dr. Diefendorf's findings of indices of impairment, which included pain, weakness and loss in range of motion and, using the A.M.A., *Guides* with the specific applicable tables and grading schemes identified, properly calculated that appellant had an eight percent permanent impairment of his right lower extremity. As Dr. Simpson's opinion was based upon 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.⁶

² *Lena P. Huntley*, 46 ECAB 643 (1995).

³ *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

⁴ A.M.A., *Guides*, 86, Table 64.

⁵ *Id.* at 322.

⁶ See *Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Raymond Montanez*, 31 ECAB 1475 (1980).

The September 27, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 29, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member