

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL SOLO and U.S. POSTAL SERVICE,  
OLATHE EAST POST OFFICE, Olathe, KS

*Docket No. 01-292; Submitted on the Record;  
Issued October 29, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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

On December 20, 1995 appellant, then a 41-year-old letter carrier, filed a notice of traumatic injury alleging that on December 19, 1995 he slipped on snow and ice while delivering a package and "went down on [his] right knee twisting the left knee." On December 20, 1995 appellant was diagnosed with "left knee strain" and "left medial collateral strain." Appellant's condition was accepted for left knee strain. A magnetic resonance imaging scan revealed a left medial meniscal tear and appellant underwent surgery on February 8, 1996. Appellant returned to limited duty on March 12, 1996.

On April 5, 1996 appellant filed a notice of recurrence, alleging that he was still having pain in the left knee and was also having more serious pain in the right knee. He attached a statement indicating that, when he fell on December 19, 1995, he fell on his right knee, which was also injured, but that no real medical care had been given to the right knee due to the seriousness of the left knee. He claimed that his right knee had hurt all along and that the pain was getting progressively worse.

By letter dated April 29, 1996, the Office of Workers' Compensation Programs informed appellant that more information was needed regarding his claimed consequential injury to the right knee.

Appellant submitted progress notes from his treating physician, Dr. Brian C. Kindred, a Board-certified orthopaedic surgeon, indicating that on April 23, 1996, appellant also had complaints of right knee pain. Appellant also submitted a May 14, 1996 report from Dr. Kindred, indicating that appellant had mentioned to him on previous occasions that his right knee also bothered him. Dr. Kindred indicated that appellant slipped on the ice injuring both his right and left knees, but that he never specifically addressed the pain in his right knee because appellant was referred to him for the left knee only.

On May 14, 1996 Dr. Kindred diagnosed appellant with right knee strain.

By decision dated November 27, 1996, the Office determined that appellant's position as modified city carrier fairly and reasonably represented his wage-earning capacity and terminated his compensation benefits.

By report dated July 21, 1997, Dr. Kindred opined that appellant had reached maximum medical improvement and that his permanent impairment rating for the left knee was 12 percent. He did not discuss how he arrived at the 12 percent rating.

By decision dated July 14, 1998, the Office also accepted appellant's claim for "right knee lateral meniscus tear and right knee arthroscopy with partial lateral meniscectomy." Appellant underwent right knee surgery on June 9, 1997.

By report dated July 10, 1998, Dr. George Varghese, a second opinion physician, opined that appellant's permanent impairment rating for the residual deficits of his left knee was three percent.

In a handwritten report dated August 13, 1998, the district medical adviser, Dr. Daniel D. Zimmerman, opined that the impairment rating for appellant's left lower extremity needed to be rounded down to two percent.

By decision dated September 9, 1998, the Office awarded appellant a two percent schedule award for the left lower extremity.

By letter dated September 29, 1998, appellant requested a review of the written record.

By decision dated February 16, 1999, the hearing representative affirmed the Office's September 9, 1998 decision, awarding appellant a two percent schedule award for the left lower extremity.

By letter dated October 25, 1999, appellant requested reconsideration. In support of his request he submitted an October 13, 1999 medical report from Dr. Kindred, in which he explained that he took appellant's cartilage damage into account when he arrived at the 12 percent permanent impairment rating.

On October 25, 1999 appellant filed a claim for a schedule award for his right knee.

In a handwritten report dated November 12, 1999, the district medical adviser opined that appellant's treating physician, Dr. Kindred, incorrectly included Table 62 to arrive at the 12 percent impairment rating.

In a merit decision dated November 18, 1999, the Office denied appellant's request for modification finding that the medical evidence of record rested with the district medical adviser.

On August 4, 2000 appellant underwent an independent medical examination by Dr. Terrence Pratt, Board-certified in physical medicine and rehabilitation, who opined that appellant had reached maximum medical improvement of his right knee.

By report dated October 3, 2000, a second opinion physician, Dr. James Zarr, Board-certified in physical medicine and rehabilitation, opined that appellant had a two percent impairment rating of the right lower extremity.

By handwritten report dated October 6, 2000, the district medical adviser agreed with Dr. Zarr's impairment rating of two percent for the right lower extremity.

By decision dated November 14, 2000, the Office awarded appellant a two percent schedule award for the right lower extremity.

The Board finds that appellant is not entitled to more than two percent permanent impairment of his left lower extremity for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.404 of the implementing federal regulations,<sup>2</sup> 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*<sup>3</sup> as a standard for determining the percentage of impairment.

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."<sup>4</sup> 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.<sup>5</sup>

In this case, appellant's attending physician, Dr. Kindred, reported on October 13, 1999 that appellant had a 12 percent permanent impairment of his left lower extremity. Using the A.M.A., *Guides*, 4<sup>th</sup> edition, he used Table 64, page 85 to arrive at a two percent impairment for the partial medial meniscus. Dr. Kindred also stated that appellant had articular surface cartilage loss, which he viewed directly on arthroscopic examination. Utilizing Table 62, Dr. Kindred gave appellant an additional 10 percent impairment rating since he thought he had cartilage

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

<sup>5</sup> *Noe L. Flores*, 49 ECAB 344 (1998).

damage somewhere between the two- and three-millimeter interval. Dr. Kindred concluded that appellant's total impairment rating for the left lower extremity was 12 percent.

The district medical adviser, however, opined in his November 12, 1999 report that Dr. Kindred incorrectly included Table 62 to arrive at the 12 percent permanent impairment rating, since "Table 62 is used to determine radiographically determined joint space interval due to arthritis and is not a table that can be used to offer a rating due to "articular cartilage loss" as may be "eye balled" at the time of an arthroscopic procedure."

The Board finds that Dr. Kindred incorrectly applied Table 62 to appellant's impairment rating since Table 62 is used for arthritis impairments based on x-rays determining cartilage intervals. Dr. Kindred based his opinion on "eye balling" appellant's surface cartilage loss directly on arthroscopic examination and not by viewing an x-ray. The Board finds that without supporting x-rays, Table 62 should not be used. Thus, appellant is not entitled to more than two percent permanent impairment of his left lower extremity for which he received a schedule award.

The November 14, 2000 and November 18, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
October 29, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member