

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT G. CARSON, SR. and U.S. POSTAL SERVICE,  
POST OFFICE, Newark, NJ

*Docket No. 03-1058; Submitted on the Record;  
Issued July 2, 2003*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 35 percent permanent impairment of the right lower extremity, for which he received a schedule award.

On June 8, 1984 appellant, then a 29-year-old mail clerk, sustained a traumatic injury to his right knee in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for soft tissue injury of the right knee, post-traumatic synovitis of the right knee, aggravation of arthritis of the right knee and a torn right lateral meniscus. Additionally, the Office authorized two surgical procedures, which appellant underwent on August 14, 1990 and September 5, 1991.

On October 23, 2000 the Office granted appellant a schedule award for a 35 percent permanent impairment of the right lower extremity. The award covered a period of 100.8 weeks.

Appellant requested an additional schedule award on June 3, 2002. He submitted reports dated July 8 and August 9, 2002 from his attending physician, Dr. Clifford A. Botwin, an osteopath Board-certified in orthopedic surgery, who calculated a 33 percent permanent impairment of the right lower extremity. The Office referred the case record to its medical adviser, who, in a report dated September 16, 2002, found that appellant was not entitled to an additional schedule award. The Office issued a decision on September 21, 2002 denying appellant's claim for an additional schedule award.

On October 15, 2002 appellant requested reconsideration. He submitted an October 4, 2002 report from Dr. Botwin, who calculated an 82 percent permanent impairment of the right lower extremity.<sup>1</sup> The Office again referred the case record to its medical adviser, who recommended that the Office seek further clarification from Dr. Botwin. By letter dated

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<sup>1</sup> Dr. Botwin's overall rating was based on a combination of impairments due to arthritis and loss of range of motion.

November 1, 2002, the Office asked Dr. Botwin to provide specific range of motion measurements so as to determine the extent of appellant's permanent impairment. In a report dated November 11, 2002, Dr. Botwin stated that appellant was 37 degrees short of full extension and could flex his knee only to 75 degrees from 0 degrees. While he noted the absence of significant atrophy, Dr. Botwin stated that appellant had weakness with extension against resistance. The Office medical adviser reviewed Dr. Botwin's November 11, 2002 report and noted that, based on the reported range of motion, an additional schedule award was not justified. The Office medical adviser further stated that Dr. Botwin did not grade appellant's muscle weakness. Therefore, the Office medical adviser did not calculate an impairment for appellant's reported weakness with extension against resistance.

In a decision dated November 29, 2002, the Office denied modification of the September 21, 2002 decision.

The Board finds that appellant failed to establish that he has more than a 35 percent permanent impairment of the right lower extremity.

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>2</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>3</sup>

With respect to appellant's loss of motion due to flexion, Dr. Botwin reported 65 degrees of flexion in both his July 8 and October 4, 2002 reports. In his more recent report dated November 11, 2002, Dr. Botwin reported 75 degrees of flexion. In accordance with Table 17-10 at page 537 of the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), flexion greater than 60 degrees but less than 80 degrees represents a 20 percent impairment of the lower extremity. As Dr. Botwin correctly noted in his October 4, 2002 report, the fifth edition of the A.M.A., *Guides* does not include a specific table for rating impairments based on loss of extension of the knee. Nonetheless, Dr. Botwin estimated a 12 percent lower extremity impairment due to loss of extension. This rating, however, is not supported by the A.M.A., *Guides*.

In his October 4, 2002 report, Dr. Botwin also calculated a 50 percent lower extremity impairment for severe arthritis under Table 17-31 at page 544 of the A.M.A., *Guides*. However, this rating must be supported by an x-ray, which Dr. Botwin did not provide. He merely noted that the rating was based on his "physical findings of no joint cartilage." Additionally, Dr. Botwin's overall impairment rating of 82 percent is contrary to the approach outlined in the

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

A.M.A., *Guides* (5<sup>th</sup> ed. 2001), which precludes a combination of impairments due to loss of range of motion and arthritis.<sup>4</sup>

The record also includes evidence of muscle weakness as noted by Dr. Botwin in both his July 8 and November 11, 2002 reports. In the July 8, 2002 report, Dr. Botwin assessed the condition as Grade 4, noting that appellant had active motion against gravity with some resistance. With respect to the November 11, 2002 report, Dr. Botwin noted that appellant had weakness with extension against resistance, causing a shaking in the knee when he tried to extend his knee against the observer's resistance. However, Dr. Botwin did not grade the described muscle weakness. The Office medical adviser noted the fact that Dr. Botwin had not graded appellant's muscle weakness in his November 11, 2002 report and, therefore, the medical adviser did not calculate impairment due to muscle weakness. Assuming Dr. Botwin would have continued to grade appellant's muscle weakness as 4, consistent with his earlier report of July 8, 2002, a Grade 4 impairment due to knee extension muscle weakness represents a 12 percent lower extremity impairment.<sup>5</sup>

Appellant has received compensation for a 35 percent permanent impairment of his right lower extremity. Dr. Botwin's recent reports establish a 20 percent impairment due to loss of range of motion (flexion). The record does not establish 50 percent impairment, or any lesser impairment, for arthritis under Table 17-31 of the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). Accordingly, appellant has failed to establish that he has more than a 35 percent permanent impairment of his right lower extremity.

The November 29, 2002 decision of the Office of Workers' Compensation Programs is, hereby, affirmed.

Dated, Washington, DC  
July 2, 2003

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> Table 17-2 at page 526, A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>5</sup> Table 17-8 at page 532, A.M.A., *Guides* (5<sup>th</sup> ed. 2001).