U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMMANUEL J. THOMAS and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

Docket No. 03-455; Submitted on the Record;
Issued May 1, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 10 percent impairment of the right lower extremity, for which he received a schedule award.

On March 2, 2001 appellant, then a 30-year-old supervisor, sustained an employment-related right torn meniscus and on June 6, 2001 underwent authorized surgical repair. By letter dated June 17, 2002, the Office of Workers' Compensation Programs requested that appellant have his treating physician evaluate his right knee tear under the fifth edition of the A.M.A., *Guides to the Evaluation of Permanent Impairment*. Dr. Raimonds Zvirbulis, appellant's treating Board-certified orthopedic surgeon, submitted a report dated July 9, 2002. In a report dated September 16, 2002, an Office medical adviser reviewed Dr. Zvirbulis' report.

By decision dated October 7, 2002, appellant was granted a schedule award for a ten percent permanent impairment of the right lower extremity, for a total of 28.8 weeks of compensation to run from April 29 to November 16, 2002. The instant appeal follows.[1]

The Board finds that appellant has not established that he has greater than a ten percent impairment of the right lower extremity, for which he received a schedule award.

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[1] The Board notes that on March 21, 2002 appellant filed an appeal with the Board on a January 24, 2002 Office decision denying that he sustained a recurrence of disability on September 18, 2001 causally related to the March 2, 2001 employment injury. By decision dated December 6, 2002, Docket No. 02-1230, the Board affirmed the prior decision. It is further noted that on January 28, 2002 appellant requested a hearing before the Branch of Hearings and Review of the Office, regarding the January 24, 2002 Office decision. The hearing was held on June 4, 2002. By decision dated August 25, 2002 and finalized August 26, 2002, an Office hearing representative affirmed the prior decision. The Office and the Board may not have simultaneous jurisdiction over the same issue in the same case. Following the docketing of an appeal with the Board, the Office does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by the Office on the same issues for which an appeal is filed, such as the August 26, 2002 Office decision, are null and void; *see Noe L. Flores*, 49 ECAB 344 (1998).

The schedule award provisions of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. The Act, however, does not specify the manner in which the percentage of loss shall be determined. 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*[4] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

The relevant medical evidence includes an Office form report dated July 9, 2002 in which Dr. Zvirbulis advised that maximum medical improvement had been reached on April 29, 2002 and that appellant's retained active flexion equaled 105 degrees, that he was required to wear a knee brace and that there was an additional impairment of function due to weakness, atrophy, pain or discomfort estimated at 25 percent of the lower extremity. He recommended an impairment rating of 25 percent of the lower extremity. In a report dated September 16, 2002, an Office medical adviser reviewed Dr. Zvirbulis' report and, utilizing Table 17-10 of the fifth edition of the A.M.A., *Guides*, concluded that appellant had a 10 percent permanent impairment of the right lower extremity due to decreased range of motion. The Office medical adviser further advised that under Table 17-2, diagnosis-based estimates and muscle atrophy were not to be added to range of motion analysis.

The Board finds that the Office medical adviser properly rated appellant's permanent impairment. Table 17-10 of the A.M.A., *Guides* provides guidance for evaluating knee impairments and indicates that flexion of less than 110 degrees but more than 80 degrees is equal to a 10 percent lower extremity impairment.[6] Furthermore, as stated by the Office medical adviser, Table 17-2 of the A.M.A., *Guides* indicates that it is not appropriate to apply diagnosis-based ratings when measuring impairment based on a range-of-motion analysis.[7] While Dr. Zvirbulis provided a conclusory statement that appellant had a 25 percent impairment of the

[2] 5 U.S.C. §§ 8101-8193.

[3] 20 C.F.R. § 10.404 (1999).

[4] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002).

[5] *Ronald R. Kraynak*, 53 ECAB (Docket No. 00-1541, issued October 2, 2001).

[6] A.M.A., *Guides*, *supra* note 4 at 537.

[7] *Id.* at 526. The Board notes that under Table 17-33, appellant would merely be entitled to a 2 percent impairment for a medial meniscectomy. A.M.A., *Guides*, *supra* note 4 at 546.

lower extremity, he provided no specific findings other than his range-of-motion measurement that would indicate that appellant was entitled to a greater award.[8] There is, therefore, no medical evidence establishing that appellant has greater than a 10 percent impairment of the right lower extremity for which he received a schedule award.

The decision of the Office of Workers' Compensation Programs dated October 7, 2002 is hereby affirmed.

Dated, Washington, DC
May 1, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[8] The Board notes that Dr. Zvirbulis further indicated that appellant was entitled to an increased award due to "weakness, atrophy, pain or discomfort." He, however, provided no explanation with specific reference to the A.M.A., *Guides* and the Board has held that a medical opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment. *Tracy Hines*, 47 ECAB 565 (1996). A claimant may seek an increased schedule award, however, if the evidence establishes that progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).