United States Department of Labor
Employees' Compensation Appeals Board

CARLOUS H. ABNER, Appellant	)	
and	)	**Docket No. 03-2188**
	)	**Issued: February 27, 2004**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Kansas City, MO, Employer	)	

Appearances:
Carlous H. Abner, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On September 8, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated June 26, 2003. Under 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUE

The issue is whether appellant has more than 16 percent permanent impairment of his right lower extremity entitling him to a schedule award for 46.08 weeks of compensation.

[1] Appellant filed a second claim on September 20, 2001 alleging that he developed an emotional condition in the performance of duty. As the Office has not issued a final decision on this claim the Board will not address this issue for the first time on appeal. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

Appellant, then a 54-year-old supervisor, filed a notice of traumatic injury on March 24, 2001 alleging on March 23, 2001 that he injured his right knee squatting in the performance of duty. The Office accepted appellant's claim for strain of the right knee on May 10, 2001. The Office authorized surgery and on August 23, 2001 appellant's attending physician, Dr. Stephen Munns, a Board-certified orthopedic surgeon, performed arthroscopic partial medial and lateral meniscectomies with arthroscopic medial meniscus repair.

Appellant requested a schedule award on February 10, 2003. The Office referred appellant for a second opinion evaluation with Dr. George Varghese, a physician of professorial rank and Board-certified physiatrist. Dr. Varghese concluded that appellant had 17 percent impairment of his right lower extremity in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[2] (A.M.A., *Guides*) relying on the diagnosis-based method of evaluation. The Office medical adviser reviewed Dr. Varghese's report and determined that he improperly added the diagnosis-based impairment ratings rather than utilizing the Combined Values Chart in the A.M.A., *Guides*. He determined that appellant had a permanent impairment of 16 percent of his right lower extremity. The Office granted appellant a schedule award on June 26, 2003 for 16 percent permanent impairment of the right lower extremity resulting in 46.08 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] 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. However, the Act 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The A.M.A., *Guides* provide for three separate methods for calculating the permanent impairment of an individual anatomic, functional or diagnosis based.[5] The anatomic method includes noting changes include range of motion, muscle atrophy, nerve impairment and vascular derangement as found during physical examination.[6] The diagnosis-based estimates are used to evaluate impairments caused by various surgical procedures, fractures and deformities and in

[2] A.M.A., *Guides*, 5th ed (2001).

[3] 5 U.S.C. §§ 8101-8193, § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] A.M.A., *Guides*, 525.

[6] *Id.*

certain situations are combined with other methods of assessment.[7] The functional impairments are utilized last and involve conditions when anatomic changes are difficult to categorize.

ANALYSIS

The A.M.A., *Guides* direct the examining physician to calculate the impairment utilizing different alternatives and to choose the method or combination of methods that gives the most clinically accurate impairment rating.[8] Utilizing the anatomic method of determining impairment, Dr. Varghese determined that appellant had a range of motion of the right knee of 0 to 90 degrees, a 10 percent impairment of the extremity in accordance with the A.M.A., *Guides*.[9] He found that appellant had no loss of strength and consequentially did not provide a rating under this category. He concluded that the A.M.A., *Guides* anatomic method resulted in an impairment rating of only 10 percent of the right lower extremity.

In a further effort to determine the most clinically accurate impairment rating, Dr. Varghese applied the diagnosis-based estimates to appellant's right lower extremity and found that partial medial and lateral meniscectomies were a 10 percent impairment.[10] He further noted that appellant had an injury to the cruciate ligament resulting in mild laxity, a seven percent impairment in accordance with the A.M.A., *Guides*.[11] Dr. Varghese added these impairments to reach a total impairment rating of 17 percent due to the diagnosis-based estimates. He concluded that this rating properly represented appellant's impairment and that appellant's discomfort was secondary to his surgical changes and loss of range of motion. Dr. Varghese determined that the diagnosis-based rating included this element of appellant's permanent impairment. Therefore, Dr. Varghese determined that rather than using the anatomic impairment method, which resulted in only 10 percent impairment, the anatomic impairment rating, which he found resulted in a rating of 17 percent encompassed the totality of appellant's impairment and gave the most clinically accurate impairment rating.

The Office medical adviser reviewed Dr. Varghese's report on May 3, 2003. He noted that Dr. Varghese properly determined that appellant was entitled to 10 percent impairment due to partial medial and lateral meniscectomies and that appellant was also entitled to 7 percent impairment due to mild laxity of the anterior cruciate ligament. The Office medical adviser properly concluded that, based on the A.M.A., *Guides*, these two impairment ratings must be combined rather than added.[12] In an example, the A.M.A., *Guides* provide that impairments for partial lateral meniscectomy and anterior cruciate laxity should be combined to reach the lower

[7] The A.M.A., *Guides* specifically excludes combining diagnosis-based estimates with range of motion deficits due to ankylosis. A.M.A., *Guides*, 526, Table 17-2.

[8] A.M.A., *Guides*, 526.

[9] A.M.A., *Guides*, 537, Table 17-10.

[10] A.M.A., *Guides*, 546, Table 17-33.

[11] *Id.*

[12] A.M.A., *Guides*, 562, Box 17-1.

extremity diagnosis-based impairment rating. Utilizing the Combined Values Chart, impairments of 10 and 7 are combined to reach 16 percent permanent impairment.[13] There is no medical evidence in the record supporting that appellant has more than 16 percent permanent impairment of his right lower extremity in accordance with the A.M.A., *Guides* and the Office properly relied on Dr. Varghese's report in reaching the impairment rating. Therefore, the Office medical adviser properly reduced appellant's impairment rating based on the conclusion that the A.M.A., *Guides* provide that two diagnosis-based impairment should be combined rather than added. The medical evidence in the record supports that appellant is entitled to 16 percent permanent impairment of his right lower extremity.

In regard to the number of weeks of compensation, the Act provides 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. For the total loss of one leg, the Act provides for 288 weeks of compensation.[14] Any loss less than a total loss is compensated at a proportionate rate, so a 16 percent loss of use the right lower extremity equals 46.08 weeks of compensation, or 288 multiplied by 16 percent.[15]

CONCLUSION

The Board finds that as the weight of the medical evidence establishing that appellant is entitled to 10 percent impairment due to partial medial and lateral meniscectomies and 7 percent impairment due to mild anterior cruciate ligament instability and that, as the A.M.A., *Guides* require that these ratings must be combined, appellant has no more than 16 percent permanent impairment, for which he has received a schedule award.

[13] A.M.A., *Guides*, 604.

[14] 5 U.S.C. § 8107(c)(2).

[15] *Jeffrey J. Stickney*, 51 ECAB 616, 618 (2000).

ORDER

IT IS HERBY ORDERED THAT the June 26, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member