

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**IRA J. BRUMLEY, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Billings, MT, Employer**

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**Docket No. 04-697  
Issued: June 1, 2004**

*Appearances:*  
*Ira J. Brumley, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On January 20, 2004 appellant filed a timely appeal from the November 18, 2003 decision of the Office of Workers' Compensation Programs, which granted a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the schedule award decision.

**ISSUE**

The issue is whether appellant has more than a 37 percent permanent impairment of the left lower extremity, for which he received a schedule award.

**FACTUAL HISTORY**

The Office accepted appellant's claim for a left knee nondisplaced fracture of the patella, left knee traumatic arthritis and left knee replacement arising from the November 9, 1965 employment injury. Appellant underwent the knee replacement surgery on December 18, 2001. He retired from the employing establishment on June 21, 2002. On December 29, 2002 appellant filed a claim for a schedule award.

The Office referred appellant to Dr. Robert E. Steele, a Board-certified internist, to obtain an impairment rating. In a report dated June 20, 2003, he stated that appellant's only sensory loss was the infrapatellar branch of the femoral nerve. Dr. Steele stated that appellant had flexion of 132 degrees, 0 extension, no ankylosis and minimal atrophy. He noted that appellant had a lateral one-third of the patella removed and replaced with a polyethylene component which was functioning well. Applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001), 549 Table 17-35 for rating knee replacement results, he rated appellant's knee replacement pain as mild or occasional pain on stairs and walking, giving appellant 45 points; range of motion was full, giving appellant 25 points; anteroposterior stability was less than 5 millimeters (mm), giving appellant 10 points; and the mediolateral stability was 5 degrees, giving appellant 15 points. Dr. Steele concluded that appellant had a total of 95 points (45 + 25 + 10 + 15). Applying 547 Table 17-33, he stated that a total knee replacement with a good result of 85 to 100 points, represented a 37 percent impairment to the left lower extremity.

In a report dated June 2, 2003, Dr. Bill S. Rosen, an attending Board-certified physiatrist, stated that appellant had flexion of 90 degrees, had 4 to 5 mm laxity, and regarding motor strength, had a mild degree of weakness across the knee itself in both flexion and extension. He stated that appellant had a markedly reduced left knee jerk. Dr. Rosen stated that with medial lateral stress appellant had "perhaps" five degrees of movement. He advised that appellant had mild decreased function secondary to the knee replacement and traumatic arthritis. Applying the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), 549 Table 17-35 Dr. Rosen stated that appellant had a total of 70 points. He stated that, pursuant to 547 Table 17-33, 70 points for knee replacement results represented a 20 percent whole person impairment or a 50 percent lower extremity impairment.

In a report dated July 14, 2003, applying the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), 549 Table 17-35 the district medical adviser found that appellant had 95 points for his knee replacement as found by Dr. Steele. Pursuant to 547 Table 17-33, he agreed that appellant had a 37 percent impairment to the left lower extremity.

By decision dated November 18, 2003, the Office granted appellant a schedule award for 37 percent permanent impairment to the left lower extremity.

### **LEGAL PRECEDENT**

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>1</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 implementing regulations have adopted the A.M.A.,

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<sup>1</sup> 5 U.S.C. § 8107.

*Guides* as the appropriate standard for evaluating schedule losses.<sup>2</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>3</sup>

### **ANALYSIS**

In a June 20, 2003 report, Dr. Steele found that appellant had flexion of 132 degrees, 0 extension and ankylosis. He noted that appellant underwent a knee replacement and was functioning well. Pursuant to the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), Table 17-35, he rated appellant's knee replacement for pain described as mild or occasional pain on stairs and walking, as 45 points; range of motion as 25 points; anteroposterior stability of less than 5 mm as 10 points; and mediolateral stability of 5 degrees as 15 points. Dr. Steele added the points under the table for a total of 95. He then applied Table 17-33, to determine that a total knee replacement with a good result of 85 to 100 points represents a 37 percent impairment to the left lower extremity. In a July 14, 2003 report, the district medical adviser agreed with Dr. Steele.

By contrast, Dr. Rosen in his June 2, 2003 report, found that appellant had flexion of 90 degrees, 4 to 5 mm laxity, possibly 5 degrees of movement with medial lateral stress, a mild degree of weakness across the knee itself in both flexion and extension, and markedly reduced left knee jerk. He found that appellant had mild decreased function secondary to the knee replacement and traumatic arthritis. Applying the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) Table 17-35, Dr. Rosen determined that appellant had 70 points for his knee replacement which under Table 17-33, represented a 20 percent whole person impairment or a 50 percent impairment to the left lower extremity. Because Dr. Steele provided a more detailed and complete explanation of how he calculated appellant's knee replacement impairment pursuant to the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), his opinion is entitled to greater weight than Dr. Rosen.<sup>4</sup>

### **CONCLUSION**

The opinions of the referral physician and the district medical adviser are in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) and constitute the weight of the evidence. The Board therefore finds that the Office properly granted appellant a schedule award for a 37 percent permanent impairment to his left lower extremity.

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<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

<sup>4</sup> See *Gloria J. McPherson*, 51 ECAB 441, 446 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 18, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member