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

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| **RONNIE D. GARDNER, Appellant** | ) | |
| | ) | **Docket No. 05-1481** |
| **and** | ) | **Issued: December 20, 2005** |
| **U.S. POSTAL SERVICE, POST OFFICE, Porterville, CA, Employer** | ) | |

*Appearances:*
*Ronnie D. Gardner, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

### *JURISDICTION*

On July 5, 2005 appellant filed a timely appeal of November 16, 2004 and June 2, 2005 decisions of the Office of Workers' Compensation Programs finding that he had a 37 percent permanent impairment of his right leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

### *ISSUE*

The issue is whether appellant has greater than a 37 percent permanent impairment of his right leg.

### *FACTUAL HISTORY*

Appellant, who was born on April 21, 1948, sustained injuries to his left knee in the performance of his duties as a letter carrier on February 1, 1972, December 17, 1974 and September 1, 1976. The Office accepted that he sustained an aggravation of chronic left knee instability and authorized numerous surgeries culminating in a total knee arthroplasty on March 17, 1997. On October 15, 1998 the Office issued a schedule award for a 60 percent

permanent impairment of the left leg, based on a fair result of his knee replacement and on a patellectomy.

The Office accepted that appellant sustained a consequential right knee injury and authorized several surgeries, culminating in authorization of a total right knee arthroplasty. On June 27, 2001 Dr. Kelly G. Vince, a Board-certified orthopedic surgeon, performed a total right knee arthroplasty. On November 28, 2001 Dr. Vince performed further surgery on the right knee, described as lysis of adhesions and revision of patellar component to a thinner construct. In a January 14, 2003 report, Dr. Vince stated that appellant could return to work with no restrictions.

On July 25, 2003 appellant filed a claim for a schedule award. In an October 7, 2003 report, Dr. Vince stated that appellant had excellent results from the total right knee arthroplasty, noting that he had frequent but tolerable pain. On an Office form, Dr. Vince indicated that appellant had reached maximum medical improvement on October 7, 2003 and had 120 degrees of right knee flexion, generalized right knee pain after higher levels of activity, no quadriceps weakness and no ligament instability.

On December 24, 2003 an Office medical adviser applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed.) to Dr. Vince's findings. He noted that, according to Table 17-35, the pain reported by Dr. Vince would be assessed 45 points, 90 degrees of knee flexion would be assessed 18 points and 25 points would be assessed for no instability. The total number of points was 88, which according to Table 17-33, was considered a good result and a 37 percent lower extremity impairment.

On January 14, 2004 the Office issued appellant a schedule award for a 37 percent permanent impairment of the right leg.

Appellant requested a hearing and submitted two reports from Dr. Vince. In a May 20, 2004 report, Dr. Vince stated that appellant apparently received a schedule award for a 37 percent impairment of the right leg and for a 60 percent impairment of the left leg that also was subjected to a total knee arthroplasty and that "he is understandably disputing this claim." Dr. Vince noted that appellant experienced "instability which is dynamic. While hiking or walking down an incline, he experiences the right knee buckling underneath him. This necessitates that he walks sideways." On examination appellant had 105 degrees of flexion of the right knee, no instability on static testing of varus and valgus instability and an approximately 5 millimeter (mm) shift from the standard position on an anterior drawer test for anterior-posterior (AP) stability. Dr. Vince stated that appellant's dynamic instability might be related to pain inhibition or simply chronic quadriceps weakness and noted that "assessment of instability in a total knee arthroplasty differs, somewhat, from assessments of instability in an unreplaced knee." In a July 22, 2004 report, Dr. Vince stated that appellant's disability in his right knee was comparable to that in his left and that it would seem logical that he would rate 60 percent disability of the right knee. At a hearing held on June 29, 2004 appellant testified that his right knee did not have good stability and was worse than his left knee.

By decision dated September 22, 2004, an Office hearing representative noted that an Office medical adviser rated appellant's impairment based on 90 degrees of flexion rather than the 120 degrees reported by Dr. Vince and that the instability reported on May 20, 2004 should be considered. The case was remanded for the Office medical adviser to recalculate appellant's permanent impairment of the right leg.

On November 6, 2004 the Office medical adviser reviewed Dr. Vince's reports and stated:

> "In recalculating the award for the permanent functional loss of the right lower extremity again, this reviewer would reference Table 17-35, Rating Knee Replacement Results. Again, this reviewer would assess 45 points for the pain factors. Range of motion of 0 through 120 would be assessed 24 points for range of motion. Again, the records do not indicate significant static instability and under category C, 25 points are assessed when there is no instability documented. According to the form report reviewed under ligament instability, this listed as nonapplicable implying no ligament instability and thus 25 points were assessed. However, this reviewer does note a supplemental report dated May 20, 2004 indicating approximately 5 mm of shift for AP stability, which would be assessed a 5 percent impairment as per Table 35. Again, there was excellent stability in varus and valgus stress and 15 points would be assessed for this for a subtotal of 20 points rather than the full 25 points recommended by this reviewer previously. By way of explanation, the supplemental report does indicate 5 mm of AP translation which again is assessed 5 points instead of 10 for essentially no significant instability.
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> "In any case, the total number of points for instability would be 20 rather than 25. Again, there would be no deduction for flexion contracture, extension lag or malalignment. The total number of points of 45 for pain, 24 for range of motion, 20 for stability and no deduction for flexion contracture, extension lag, or malalignment would add up to 89 points. According to Table 17-33, this would be consistent with a 'Good Result,' or a 37 percent lower extremity impairment. This reviewer would remark that this is consistent with the evaluating/treating physician's assessment that he had an excellent result following total knee replacement."

By decision dated November 16, 2004, the Office found that appellant had a 37 percent permanent impairment of the right leg. Appellant requested a hearing, which he later changed to a request to a review of the written record. In a January 3, 2005 letter, he contended that his pain, swelling and discomfort were not considered and that his right knee instability was not adequately factored into his impairment.

By decision dated June 2, 2005, an Office hearing representative found that appellant had a 37 percent permanent impairment of the right leg.

## ***LEGAL PRECEDENT***

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] sets 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.

Before the A.M.A., *Guides* may be utilized, a description of the impairment must be obtained from an examining physician. This description must be in sufficient detail so that a claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[3] Where the examining physician does not rate the impairment using the A.M.A., *Guides*, it is appropriate for an Office medical adviser to apply the A.M.A., *Guides* to the findings reported on examination.[4] When the Office medical adviser provides the only evaluation that conforms to the A.M.A., *Guides*, that evaluation constitutes the weight of the medical evidence.[5]

## ***ANALYSIS***

Dr. Vince, a Board-certified orthopedic surgeon, who performed appellant's total knee arthroplasties, examined him on October 7, 2003 to rate the result of his surgery, which the physician characterized as excellent. Dr. Vince, however, did not attempt to use Tables 17-35 and 17-33 to assign a percentage of impairment, so the Office medical adviser made the impairment rating; first on December 24, 2003 and again on November 6, 2004.

In the November 6, 2004 report, the Office medical adviser used Table 17-35 and properly assigned 45 points for the pain described by Dr. Vince as slight in severity. Table 17-35 indicates that 45 points are assigned for mild or occasional pain. This Office medical adviser also properly assigned 24 points for 120 degrees of flexion found during Dr. Vince's October 7, 2003 examination. Table 17-35 provides for 1 point for each 5 degrees of motion.

The assignment of 20 points for stability was also proper. Table 17-35 provides that 5 points are assigned for 5 to 9 mm of anteroposterior movement and Dr. Vince found 5 mm of such movement. This table assigns 15 points for mediolateral movement of up to 5 degrees and

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *Roel Santos*, 41 ECAB 1001 (1990).

[4] *Lena P. Huntley*, 46 ECAB 643 (1995).

[5] *John L. McClenic*, 48 ECAB 552 (1997). If the clinical findings are fully described, any knowledgeable observer may check the findings with the criteria of the A.M.A., *Guides*. A.M.A., *Guides* 17 (5th ed. 2001).

no such movement was reported by Dr. Vince. Table 17-35 rates movement on examination and the dynamic instability with hiking or walking down inclines reported by Dr. Vince in his May 20, 2004 report is not a basis for a lower assignment of points using this table.

The Office medical adviser properly used Table 17-35 in arriving at a total of 89 points. Table 17-33 provides that 85 to 100 points constitutes a good result of total knee replacement surgery and provides for a 37 percent impairment of the lower extremity. As Dr. Vince did not use the A.M.A., *Guides* to rate the percentage of impairment, there is no probative medical evidence to establish that appellant has a greater impairment. The Board does not have jurisdiction on this appeal to review the schedule award of 60 percent impairment for appellant's left leg.[6] The Board finds that the right leg impairment rating was based on a good result following total knee replacement surgery with no patellectomy. The Office medical adviser properly explained the basis for this impairment rating in light of the findings listed by Dr. Vince.

## ***CONCLUSION***

The weight of the medical evidence establishes that appellant has no greater than a 37 percent permanent impairment of the right leg.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 2, 2005 and November 16, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 20, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[6] The most recent Office decision on the left leg impairment was issued on October 15, 1998 and the Board has jurisdiction only over decisions appealed within one year of the date of issuance. 20 C.F.R. § 501.3(d).