

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVELYN J. CHAMBERS and U.S. POSTAL SERVICE,
POST OFFICE, Kansas City, Mo.

*Docket No. 96-1321; Submitted on the Record;
Issued April 3, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a 7 percent permanent impairment of the right lower extremity, for which she received a schedule award.

Appellant injured her right knee in the performance of duty on November 16, 1993. The Office of Workers' Compensation Programs accepted her claim for right knee strain, dislocation and for tears of the anterior and posterior horns of the medial meniscus.

The Office referred appellant to Dr. James S. Zarr, who is Board-certified in physical medicine and rehabilitation, for an evaluation of her right lower extremity. Dr. Zarr found that appellant had no leg length discrepancy, gait derangement, unilateral muscle atrophy, weakness on manual muscle testing, significant limitation on range of motion, joint ankylosis, amputation, peripheral nerve injury, causalgia, reflex sympathetic dystrophy or vascular disorder. X-rays did show a cartilage interval of 3 millimeters, however, so Dr. Zarr applied Table 62, page 83, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.) and determined that appellant had a 7 percent permanent impairment of the right lower extremity. An Office medical adviser reviewed Dr. Zarr's findings and concurred that this was an acceptable rating under the A.M.A., *Guides*.

On February 6, 1996 the Office issued a schedule award for a 7 percent permanent impairment, entitling appellant to 20.16 weeks of compensation based on 75 percent of a weekly pay rate of \$694.29, for a total of \$10,780.56 in compensation.

The Board finds that appellant has no more than a 7 percent permanent impairment of the right lower extremity.

Section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations² authorize the payment of schedule awards for the loss or

¹ 5 U.S.C. § 8107.

permanent impairment of specified members, functions or organs of the body. Neither the Act nor the regulations specify how the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the standard for determining the percentage of impairment, and the Board has concurred in such adoption.³

Dr. Zarr compared his clinical findings to the criteria set forth in the A.M.A., *Guides* and properly determined that appellant had no impairment due to leg length discrepancy, gait derangement, unilateral muscle atrophy, weakness on manual muscle testing, significant limitation on range of motion, joint ankylosis, amputation, peripheral nerve injury, causalgia, reflex sympathetic dystrophy or vascular disorder. Table 62, page 83, does specify a 7 percent impairment of the lower extremity for a cartilage interval of 3 millimeters in the knee joint. Accordingly, the Board finds that appellant has no more than a 7 percent permanent impairment of the right lower extremity, for which she received a schedule award.

On appeal, appellant contends that the Office used an incorrect pay rate. To support her argument, she has submitted to the Board a PS Form 4241-A, showing her annual salary to be \$42,546 as of October 24, 1993. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision;⁴ therefore, the Board may not consider this new evidence in reviewing the Office's February 6, 1996 decision. When appellant filed her claim for a schedule award, the postmaster reported on the back of the claim form that appellant's base pay was \$36,103 per year, or \$694.29 per week, which the Office used to calculate the amount of compensation payable under the schedule award. There being no evidence to the contrary prior to the issuance of the schedule award, the Board will affirm the Office's decision.⁵

The February 6, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

² 20 C.F.R. 10.304.

³ *E.g., Leisa D. Vassar*, 40 ECAB 1287 (1989).

⁴ 20 C.F.R. § 501.2(c).

⁵ To have this new evidence considered by the Office, appellant must submit the evidence to the Office with a written request for reconsideration within one year of the date of this decision.

Dated, Washington, D.C.
April 3, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member