

U. S. DEPARTMENT OF LABOR  
Employees' Compensation Appeals Board

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In the Matter of GEORGE N. THORNTON and U.S. POSTAL SERVICE,  
POST OFFICE, Baltimore, Md.

*Docket No. 97-460; Submitted on the Record;  
Issued September 29, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he had more than a 10 percent impairment of the left knee for which he received a schedule award.

On January 14, 1997 appellant, a 39-year-old mail carrier, sustained an injury while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for left ankle and knee sprain. On September 20, 1980, appellant filed a claim for a recurrence of disability. The Office accepted appellant's claim and added left medial meniscus tear and left knee arthroscopy as accepted conditions.<sup>1</sup> Appellant retired in August 1992.<sup>2</sup> On February 23, 1995, appellant filed a claim for a schedule award. By decision dated October 21, 1996, the Office issued appellant a schedule award for a 10 percent permanent impairment of the left leg for 28.8 weeks of compensation.

The Board has carefully reviewed the entire case record on appeal and find that this case is not in posture for a decision.

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<sup>1</sup> Subsequently, appellant filed a claim for an injury to his right knee. The Office accepted that claim for right knee sprain. Appellant received a schedule award for a 60 percent permanent impairment of his right lower extremity.

<sup>2</sup> A review of the record reveals that there were numerous attempts by the Office to find the original record of the claim filed by appellant in relation to his traumatic injury and claim for recurrence. However, the case file could not be found. Consequently, the claims examiner provided the pertinent information from the statement of accepted facts. All of the evidence relevant to appellant's schedule award, the claim at issue herein, is contained in the record.

Section 8107 of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulation<sup>4</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.<sup>5</sup>

In the present case, the fourth edition of the A.M.A., *Guides* provides the appropriate standards for evaluating appellant's left lower extremity in that appellant's initial schedule award for impairment of his left leg was granted by the Office after November 1, 1993, the effective date of the fourth edition of the A.M.A., *Guides*.<sup>6</sup> Initially, Dr. Maurice J. Berman found a 60 percent permanent impairment of the left lower extremity based on the third edition of the A.M.A., *Guides*. He noted that appellant had a 40 degree loss of flexion of the knee joint and loss of endurance, pain and weakness in the joint. By letter dated July 11, 1995, the Office requested that Dr. Donald I. Saltzman, appellant's treating physician supply, an impairment rating for his right leg consistent with the fourth edition of the A.M.A., *Guides*. In a report dated July 21, 1995, Dr. Mohammad H. Zamani, a consulting physician for Dr. Saltzman and a Board-certified orthopedic surgeon, reported that appellant was in need of total left knee replacement in the future, had a flexion contracture of the left knee 15 degrees, flexion up to 95 degrees, and moderate swelling and tenderness around the medial side. In his September 8, 1995 report, Dr. Zamani noted pain and stiffness in both knees, a 10 degree loss of extension and flexion limited to 100 degrees in both knees, severe swelling in the left knee and general tenderness over the left knee. On an impairment rating form dated December 1, 1995, Dr. Zamani noted a date of maximum medical improvement of July 21, 1995, an active flexion of 100 degrees, a retained extension of minus 15 degrees, a 20 percent impairment of the lower extremity due to pain, atrophy or discomfort and a total impairment of 55 percent. An Office medical adviser then reviewed this rating and found a 10 percent permanent impairment of the left leg based on the 100 degree flexion in accordance with the fourth edition of the A.M.A., *Guides*. The Office medical adviser noted that an additional partial permanent impairment rating could be included if Dr. Zamani provided data for Table 3/83 of the A.M.A., *Guides*, "Send xerox copy of chart and instructions."

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<sup>3</sup> 5 U.S.C. § 8107(c).

<sup>4</sup> 20 C.F.R. § 10.304.

<sup>5</sup> *Quincy E. Malone*, 31 ECAB 846 (1980).

<sup>6</sup> See FECA Bulletin No. 94-4 (issued November 1, 1993). Board precedent and Office procedure indicate that schedule awards should be evaluated using the edition of the A.M.A., *Guides* originally used by the Office for calculation purposes; see *Roy L. Brandt*, 41 ECAB 569 (1990).

The Federal (FECA) Procedure Manual provides that the Office should advise any physician evaluating the permanent impairment to use the A.M.A., *Guides*.<sup>7</sup> The procedure manual further states that injuries can leave objective or subjective impairments which cannot be easily measured by the A.M.A., *Guides*, such as, *inter alia*, pain, atrophy and loss of sensation and that such effects should be explicitly considered.<sup>8</sup>

In the present case, although Dr. Zamani does not clearly explain how he arrived at a 55 percent permanent impairment for appellant's left lower extremity, the Office did not advise the doctor that he should evaluate appellant's impairment using the A.M.A., *Guides*. Rather, the Office requested that Dr. Saltzman provide an impairment rating for appellant's right leg for which he had already received a schedule award, and failed to make a similar request for an impairment rating for appellant's left leg. In addition, the Office medical adviser failed to fully explain the basis for his determination that there was a 10 percent impairment rating, did not consider pain, atrophy and loss of sensation in making his determination, and requested that a letter be submitted to Dr. Zamani for further information concerning a rating under Table 3/83 of the A.M.A., *Guides*.

It is well established that the schedule award provisions of the Act, which provide an award for loss of use of specified members or functions of the body, are made without regard to actual loss of wage-earning capacity resulting from the injury.<sup>9</sup> Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter, and the Office shares responsibility in the development of evidence.<sup>10</sup> The case will therefore be remanded to the Office for it to advise Dr. Zamani that he should evaluate appellant's impairment using the fourth edition of the A.M.A., *Guides* as a reference. Dr. Zamani should then submit a supplemental report. After such further development as the Office deems necessary, it should issue a *de novo* decision on the percentage of partial permanent impairment of appellant's left leg.

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<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule awards and Permanent Disability Claims*, Chapter 2.808.6(a) (March 1995).

<sup>8</sup> *Id.* at Chapter 2.808.6(a)(2).

<sup>9</sup> See *Stanley F. Stuczynski*, 12 ECAB 159 (1960).

<sup>10</sup> *William Cantrell*, 34 ECAB 1233 (1983).

The decision of the Office of Workers' Compensation Programs dated October 21, 1996 is hereby set aside and the case is remanded to the Office for further action consistent with this decision.

Dated, Washington, D.C.  
September 29, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member