

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY V. REGIEC and U.S. POSTAL SERVICE,  
POST OFFICE, Lavallette, NJ

*Docket No. 99-2055; Submitted on the Record;  
Issued September 6, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained more than a 13 percent impairment of the right lower extremity, for which she received a schedule award.

In this case, the Office of Workers' Compensation Programs accepted that on April 19, 1986 appellant, then a 31-year-old letter carrier, sustained synovitis and traumatic chondromalacia of the right knee in the performance of duty. The Office additionally authorized surgical correction of these conditions, which was performed on May 27, 1986 and April 8, 1987.

On September 29, 1987 appellant filed a claim for a schedule award.

In a report dated April 16, 1998, Dr. Nicholas P. Diamond, an osteopath, noted that he had examined appellant in order to evaluate her permanent impairment regarding her right knee. He provided findings on examination which included peripatellar tenderness as well as medial and lateral joint space tenderness; right knee range of motion from 0 to 100 degrees with pain; evidence of atrophy of the right thigh and calf musculature manifested by measurement of the thigh circumference at 40 centimeters on the right as compared to 47 centimeters on the left and calf circumference of 38 centimeters on the right as compared to 39 centimeters on the left; motor strength of grade 4-4+/5 for the right lower extremity; and a history of arthroscopic arthroklesis, synovectomy, lateral release and lateral re-release and a partial medial meniscectomy. Utilizing Table 41, page 78 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993), Dr. Diamond equated appellant's range of motion deficit on right knee flexion with a 10 percent permanent impairment of the right lower extremity and utilizing Table 37, page 77 of the A.M.A., *Guides*, he equated appellant's right thigh atrophy of 7 centimeters with a 13 percent permanent impairment. Using the Combined Values Chart located on pages 322-24 of the A.M.A., *Guides*, Dr. Diamond concluded that appellant had a 22 percent permanent impairment of the right lower extremity.

In a report dated May 20, 1998, an Office medical adviser reviewed Dr. Diamond's findings and noted that pursuant to FECA Bulletin No. 96-17, the use of Table 41, page 78 in conjunction with Table 37, page 77, was precluded. Accordingly, the Office medical adviser accorded appellant a 13 percent permanent impairment for the right thigh atrophy only.

By decision dated May 22, 1998, the Office granted appellant a schedule award for a 13 percent permanent impairment of the right lower extremity. Following appellant's request for an oral hearing, which was held on January 11, 1999, an Office hearing representative in a March 5, 1999 decision, affirmed the Office's prior finding that appellant is entitled to a schedule award for a 13 percent permanent impairment of the right lower extremity.

The Board has duly reviewed the case record in the present appeal and finds that appellant has a 22 percent permanent impairment of her right lower extremity.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> 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. 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 Office has adopted the A.M.A., *Guides* (4<sup>th</sup> ed. 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>2</sup>

In the instant case, the Office based its schedule award on a May 20, 1998 evaluation, in which an Office medical adviser reviewed the April 16, 1998 findings of Dr. Diamond, in accordance with the standards of the fourth edition of the A.M.A., *Guides* and determined that appellant had a 13 percent permanent impairment of her right lower extremity, as opposed to the 22 percent impairment indicated by Dr. Diamond. The Office medical adviser improperly concluded that, as provided by FECA Bulletin 96-17, Table 37, page 77 of the A.M.A., *Guides*, and Table 41, page 78 of the A.M.A., *Guides*, are mutually exclusive and, therefore, impairment percentages may not be given utilizing both tables. The Office medical adviser, therefore, erred in his calculation regarding appellant's lower extremity impairment.

The Office, in FECA Bulletin No. 95-17, issued March 23, 1995, stated that certain tables in Chapter 3 of the A.M.A., *Guides* are not to be used with other tables in the chapter because to do so would result in "overlapping applications, leading to percentages which greatly overstated the impairment." The bulletin specifies that Table 37 should not be used with Tables 36, 38 and 39 in determining impairment. FECA Bulletin No. 96-17, issued September 20, 1996, is the applicable bulletin in the instant case and references the tables listed in FECA Bulletin No. 95-17.<sup>3</sup> While the A.M.A., *Guides* considers weakness (Table 39) and atrophy

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *James J. Hjort*, 45 ECAB 595 (1994).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 at 4 (October 1995).

(Table 37) as alternate methods of measuring the same impairment -- diminished muscle function -- the A.M.A., *Guides* does not proscribe the use of the range of motion table, Table 41, in combination with one of the methods for evaluating diminished muscle function.<sup>4</sup> Dr. Diamond did report seven centimeters of thigh atrophy, which is covered by Table 37 of Chapter 3 of the A.M.A., *Guides* and considered it an impairment additional to that for the loss of right knee motion. Thus, the 13 percent impairment for atrophy, when combined with appellant's 10 percent impairment due to loss of range of motion, represents a total impairment of 22 percent pursuant to the Combined Values Chart at page 322 of the A.M.A., *Guides*.<sup>5</sup> Appellant has failed to provide any probative medical evidence that she has greater than a 22 percent impairment of her right lower extremity. Accordingly, the Office's decision will be modified to reflect a 22 percent impairment rating of the right lower extremity.

The decision of the Office of Workers' Compensation Programs dated March 5, 1999 is hereby affirmed as modified to reflect a 22 percent impairment of appellant's right lower extremity.

Dated, Washington, D.C.  
September 6, 2000

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 Exhibit 4 (October 1995) does not include these in its list of incompatible tables.

<sup>5</sup> The calculation of a 13 percent impairment due to atrophy and a 10 percent impairment due to loss of range of motion, is in accordance with Tables 37 and 41 of the A.M.A., *Guides* at pages 77 and 78.