

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD PERSICO and U.S. POSTAL SERVICE,
POST OFFICE, Shelton, CT

*Docket No. 01-995; Submitted on the Record;
Issued December 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a two percent permanent impairment to his right leg.

The Office of Workers' Compensation Programs accepted that appellant sustained an acute right knee sprain and a torn medial meniscus in the right knee while in the performance of duty on January 2, 1999. By decision dated February 21, 2001, the Office issued a schedule award for a two percent permanent impairment to the right leg. The period of the award was 5.76 weeks commencing July 22, 1999.

The Board finds that appellant has not established more than a two percent permanent impairment to the right leg.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ The Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* for evaluating schedule awards.

The record indicates that appellant underwent surgery on March 1, 1999 to repair the torn medial meniscus. In a report dated February 29, 2000, the attending physician, Dr. Stuart Belkin, an orthopedic surgeon, stated that appellant had a five percent permanent impairment to the right knee. He stated that this was a result of persistent symptoms and a partial removal of the medial meniscus. Appellant argues that he should have received a five percent schedule award based on Dr. Belkin's reports.

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

Dr. Belkin stated that the impairment was to the right knee. Under the Act the knee is not specifically identified under section 8107. Therefore, the percentage of impairment is based on the impairment to the leg as a whole.

Moreover, the percentage of impairment to the leg must be determined in accordance with the A.M.A., *Guides* and Dr. Belkin did not refer to the A.M.A., *Guides*. In a report dated June 16, 2000, an Office medical adviser noted that, under Table 64 of the A.M.A., *Guides*, a partial medial meniscectomy is considered a two percent impairment to the leg.² The Office medical adviser found no medical evidence establishing a greater impairment.

Based on the evidence of record, the Office properly determined that appellant was entitled to a two percent permanent impairment to the right leg. Under 5 U.S.C. § 8107, the maximum impairment to the leg is 288 weeks. Therefore appellant is entitled to 2 percent of the maximum, or 5.76 weeks of compensation.

The decision of the Office of Workers' Compensation Programs dated February 21, 2001 is affirmed.

Dated, Washington, DC
December 4, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

² 20 C.F.R. § 10.404; A.M.A., *Guides* (4th ed. 1993), 85, Table 64.