

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY A. GRIFFIN and U.S. POSTAL SERVICE,  
LINCOLN ANNEX, Clearwater, FL

*Docket No. 01-1040; Submitted on the Record;  
Issued December 21, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 10 percent permanent impairment of the right lower extremity for which he received a schedule award.

The Office of Workers' Compensation Programs accepted that appellant, a letter carrier, sustained right knee contusion while in the performance of duty on October 21, 1997. On February 1, 1999 appellant requested a schedule award.

In reports dated February 2 and September 9, 1999, Dr. Robert P. Yamokoski, an attending Board-certified orthopedic surgeon, concluded that appellant had a 13 percent permanent impairment of his right lower extremity and referred to Table 37 at page 66 and Table 62 at page 83 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* in support of this determination.

In a report dated December 20, 1999, Dr. Marcus Kornberg, a second opinion Board-certified orthopedic surgeon, determined appellant had no permanent impairment of his right knee as the October 21, 1997 employment injury temporarily aggravated a preexisting condition.

Pursuant to section 8123(a) of the Federal Employees' Compensation Act, appellant was referred to Dr. Frank K. Kriz, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in the medical evidence concerning the degree of impairment. In a report dated November 20, 2000, Dr. Kriz provided a history of appellant's October 21, 1997 employment injury, medical treatment and his findings on physical and objective examination. Dr. Kriz opined that appellant's right knee flexion was limited due to the October 21, 1997 employment injury and concluded that he had a 10 percent impairment rating for the right lower extremity.

In a November 27, 2000 report, the Office medical adviser reviewed Dr. Kriz's report and concurred that appellant had only a 10 percent permanent impairment due to his loss of flexion and referred to Table 21 at page 78 of the A.M.A., *Guides*.

By decision dated December 16, 2000, the Office granted appellant a schedule award for a 10 percent permanent impairment of the right lower extremity.

The Board finds that appellant has not established that he has more than a 10 percent permanent impairment of the right lower extremity.

Section 8107 of the Act<sup>1</sup> provides that, if there is permanent disability involving the loss or loss of use of a specific enumerated member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</sup> The Act does not specify the manner by which the percentage of impairment for a schedule award 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 uniform standard applicable to all claimants.<sup>3</sup>

Section 8123(a) of the Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>4</sup>

In the present case, Dr. Yamokoski, determined that appellant had a 13 percent permanent impairment of the right lower extremity, while Dr. Kornberg determined that appellant had no permanent impairment of the right lower extremity. As a conflict existed in the medical opinion evidence between Drs. Yamokoski and Kornberg, the Office properly referred appellant to Dr. Kriz for an impartial medical examination.

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>5</sup>

Inasmuch as Dr. Kriz's medical report is rationalized and based on an accurate factual and medical background, the Board finds that his opinion constitutes the weight of the medical opinion evidence in this case. Furthermore, the Office medical adviser concurred in this determination. Therefore, the Office properly determined that appellant was not entitled to more than a 10 percent permanent impairment of the right lower extremity, for which he has already received a schedule award.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; § 8107.

<sup>2</sup> *Id.* 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).

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> 5 U.S.C. § 8123(a); *see also* *Charles S. Hamilton*, 52 ECAB \_\_\_\_ (Docket No. 99-1792, issued October 13, 2000); *Leonard M. Burger*, 51 ECAB \_\_\_\_ (Docket No. 98-1532, issued March 15, 2000); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>5</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

The December 16, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
December 21, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member