

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDUARDO GALLEGOS and U.S. POSTAL SERVICE,  
POST OFFICE, El Paso, TX

*Docket No. 03-237; Submitted on the Record;  
Issued February 25, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 12 percent permanent impairment to his left lower extremity for which he received a schedule award.

On February 4, 2000 appellant, then a 60-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a meniscal tear because of "the physical stress involved in carrying out the duties of a letter carrier." By letter dated March 31, 2000, the Office of Workers' Compensation Programs accepted appellant's claim for a left medial meniscus tear.

On May 5, 2000 appellant filed a claim for a schedule award.

By letter dated May 22, 2000, the Office requested that Dr. Richard S. Westbrook, appellant's treating Board-certified orthopedic surgeon, submit a rating for schedule award purposes. Dr. Westbrook responded in a medical report dated July 7, 2000, noting:

"The patient has reached maximum medical improvement as of June 30, 2000. The patient is going to have a partial permanent impairment by the [American Medical Association,] *Guides to the Evaluation of Permanent Impairment*, [f]ourth [e]dition. He is going to have a 10 percent impairment secondary to excision of the medial meniscus. He is going to have a 10 percent impairment secondary to the osteoarthritic changes in the knee. The patient is going to have a 10 percent impairment secondary to his limited range of motion. These are going to be permanent impairments and will not change in the future."

On December 19, 2001 the Office denied appellant's claim for a schedule award, as it found that there was insufficient medical evidence for an award.

In a March 5, 2002 report, Dr. Westbrook applied the fifth edition of the A.M.A., *Guides* and noted:

“The patient’s range of motion of the knee measured today is 0 to 110 degrees. By Table 17-10 from the 5<sup>th</sup> edition this gives a 10 percent lower extremity impairment which equals a 4 percent whole person impairment. By Table 17-8 the patient has a Grade IV weakness of quadriceps in extension which gives a 12 percent lower extremity, 5 percent whole person impairment. By the combined value table the patient has a 9 percent whole person impairment secondary to the above values. The patient has reached maximum medical improvement.”

On April 4, 2002 the Office referred appellant’s file to the Office medical adviser and requested an impairment rating for the left leg. In a report dated May 8, 2002, the Office medical adviser found that appellant had a 12 percent permanent impairment. In forming this conclusion, the Office medical adviser utilized Dr. Westbrook’s report and agreed that as appellant had a motor deficit, left knee, Grade IV, he would be entitled to a 12 percent impairment rating based on Table 17-8, page 532, of the A.M.A., *Guides* (5<sup>th</sup> edition). The Office medical adviser noted, however, that Table 17-2, page 526, of the A.M.A., *Guides* prohibits combining the impairment value for decreased motion with the impairment value due to muscle weakness. Accordingly, he determined that only one of the impairment components could be used. He utilized the value due to motor deficit as it allowed a higher impairment rating was most beneficial to appellant.

On June 24, 2002 the Office issued a schedule award for a 12 percent impairment of the left lower extremity.

The Board finds that appellant has no more than a 12 percent permanent impairment of the left lower extremity.

The schedule award provision of the Federal Employees’ Compensation Act<sup>1</sup> and its implementing federal regulation,<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>3</sup> 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> See 20 C.F.R. § 10.404 (1999).

In the instant case, the Office medical adviser agreed with Dr. Westbrook that pursuant to Table 17-8, page 532, appellant was entitled to a 12 percent impairment based on a Grade IV weakness of quadriceps in extension. Dr. Westbrook also indicated that appellant had a 10 percent impairment based on Table 17-10 due to range of motion in his knee. The difference between the two opinions is that appellant's physician, Dr. Westbrook, combined these two figures to determine appellant's impairment. The Office medical adviser correctly noted that this is prohibited by Table 17-2, page 526.<sup>5</sup> Accordingly, the Office medical adviser awarded a 12 percent impairment, as this was more beneficial to appellant than the 10 percent impairment allowable under Table 17-10. Accordingly, as the Office medical adviser is the only physician to have properly applied the A.M.A., *Guides*, the Office properly found that appellant had a 12 percent impairment of the left lower extremity.

The decision of the Office of Workers Compensation Programs dated June 24, 2002 is hereby affirmed.

Dated, Washington, DC  
February 24, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> The cross-usage chart (Table 17-2) indicates which methods and resulting impairments may be combined.