

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. WARREN and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, N.J.

*Docket No. 97-491; Submitted on the Record;
Issued December 7, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established entitlement to a schedule award for more than a 15 percent impairment of his right knee.

Appellant, then a 52-year-old letter carrier, filed a claim on July 28, 1993 for a knee injury related to his duties. On September 9, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for sprain/strain of the right knee.

On July 11, 1995 appellant, through counsel, filed a claim for a schedule award and submitted a February 14, 1995 medical report from Dr. David Weiss, appellant's treating physician and an osteopath, in support of his claim. In his report, Dr. Weiss demonstrated a familiarity with appellant's medical history and reported findings. He noted that an August 1993 magnetic resonance imaging (MRI) scan was positive for a "degenerative signal medial and lateral menisci, osteophytic spurring." Upon examination conducted on January 23, 1995, Dr. Weiss noted peripatellar tenderness involving the mid-facet with moderate crepitance and tenderness in the medial joint space and in the medial condyle. Dr. Weiss diagnosed quadriceps atrophy, noting that appellant had a 44 centimeter right quadriceps circumference as compared to a 47 centimeter circumference of the left quadriceps muscle. Muscle strength testing revealed a grade of three plus five involving the right quadriceps. Range of motion revealed flexion-extension of "0 -- 90/140 degrees with pain." Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr Weiss determined that appellant had a 32 percent permanent impairment of the right knee based on osteoarthritis and crepitance, 5 percent, loss of motor strength in the right quadriceps, 17 percent and loss of range of motion, 10 percent, for a total of 32 percent.

On September 5, 1995 the Office referred appellant's medical record and a statement of accepted facts to the Office medical adviser for an opinion regarding appellant's schedule award based on his employment-related right knee injury.

On September 6, 1995 the Office medical adviser stated that appellant had a 15 percent permanent impairment of the right knee. The Office medical adviser agreed with Dr. Weiss' determination that appellant had a 5 percent permanent impairment based on appellant's osteoarthritis and crepitus and a 10 percent permanent impairment due to loss of range of motion for a total of 15 percent. However, the Office medical adviser discounted his calculations based on appellant's loss of strength in the right quadriceps noting that the FECA Bulletin No. 95-17 "precludes the use of muscle weakness in conjunction with arthritis."

In a decision dated November 27, 1995, the Office issued a compensation award for a 15 percent schedule award based on the permanent impairment of his right knee. On December 5, 1995 appellant requested an oral hearing.

On June 17, 1996 an oral hearing was held in Philadelphia, Pa., and a decision was issued and finalized on August 22, 1996. In that decision, the hearing representative determined that the Office medical adviser properly relied on the A.M.A., *Guides* to determine that appellant had a 15 percent permanent impairment of the right knee and affirmed the Office's November 27, 1995 decision.

The Board finds that appellant has not sustained more than a 15 percent impairment of his right knee, for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 Office has adopted the A.M.A., *Guides*,³ and the Board has concurred in such adoption as an appropriate standard for evaluating schedule losses.⁴

In this case, the Office, in FECA Bulletin No. 95-17⁵ stated that certain tables in Chapter 3 of the A.M.A., *Guides* are not to be used with other tables in that chapter because to do so would result in "overlapping applications, leading to percentages which greatly overstated the impairment." Specifically, the Office noted that Table 39, Impairments from Lower Extremity Muscle Weakness, is not to be used with Table 62, Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals. Since Dr. Weiss relied on both Table 39 and 62 in determining appellant's schedule award, his determination had diminished probative

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ A.M.A., *Guides* (4th ed. 1993).

⁴ Kenneth E. Leone, 46 ECAB 133 (1994).

⁵ See FECA Bulletin No. 95-17 (issued March 23, 1995).

value. However, the Office medical adviser properly applied the A.M.A., *Guides* by calculating appellant's permanent partial impairment based on his arthritis and range of motion determinations to arrive at a 15 percent permanent impairment of the right knee.

The decision of the Office of Workers' Compensation Programs dated August 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 7, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member