

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN J. CARPER and U.S. POSTAL SERVICE,
POST OFFICE, Peoria, Ill.

*Docket No. 96-907; Submitted on the Record;
Issued February 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

The Board has duly reviewed the case record and concludes that appellant has not established that he is entitled to a greater schedule award.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a mail handler, sustained a right knee strain and infection when his foot became entangled in a banding strap and he twisted his leg on May 11, 1993. Appellant underwent a right knee arthroplasty and partial medial meniscectomy with limited synovectomy on July 26, 1993 resulting from the accepted injury. On October 4, 1994 appellant filed a claim for a schedule award. On October 13, 1994 appellant's treating physician, Dr. George W. Lane, reported that appellant had reached maximum medical improvement on October 4, 1994; that appellant had only minimal to mild discomfort and pain, with normal flexion of the leg of 110 to 120 degrees and full extension. Dr. Lane noted that appellant had about 10 percent atrophy and weakness in the quadriceps which would be pretty standard for this type of procedure of partial meniscectomy, with no ligament instability and no post-traumatic arthritis. On February 20, 1995 an Office medical adviser, Dr. Janet Elliot, reviewed Dr. Lane's report and noted that pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Table 64 page 85 appellant's partial medial meniscectomy would entitle him to a 2 percent permanent impairment of the right lower extremity. On April 14, 1995 the Office granted appellant a schedule award for a two percent permanent loss of use of the right leg. On April 24, 1995 appellant requested that the Office reconsider his schedule award and reevaluate Dr. Lane's report. On December 1, 1995 the Office denied appellant's request for reconsideration, without reopening the case for merit review.

The Federal Employees' Compensation Act schedule award provisions¹ set forth the number of weeks of compensation that is to be paid for permanent loss of use of the members of the body that are listed in the schedule. The Act, however does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. As a matter of administrative practice the Board has stated: "For consistent results and to insure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables. The Office has adopted and the Board has approved of the A.M.A., *Guides to the Evaluation of Permanent Impairment*, as the uniform standard applicable to all claimants."²

The Office medical adviser properly evaluated appellant's right knee impairment pursuant to the *Guides*, Table 64, for permanent impairment of the knee resulting from partial meniscectomy. The Board notes that the medical adviser utilized the diagnosis-based estimates of impairment provided in the fourth edition of the *Guides*. As stated in Chapter 3.2i of the *Guides*,³ some impairment estimates are assigned more appropriately on the basis of a diagnosis than on the basis of findings on physical examination, if for example appellant has a good return of function following surgical treatment. The evidence of record indicates that appellant does not have a loss of range of motion of the right knee. Furthermore, the evidence does not indicate that appellant has sustained a nerve injury which would cause pain, weakness or loss of sensation of the right knee. While appellant's treating physician, Dr. Lane, noted that the partial meniscectomy had resulted in some atrophy and weakness of the knee, Dr. Lane did not provide the factual basis for evaluation of appellant's knee impairment pursuant to the requirements of the fourth edition of the *Guides*. The Office therefore properly utilized the diagnosis-based estimate as the base of the schedule award provided by the Office medical adviser.

¹ 5 U.S.C. § 8107.

² *James J. Hjort*, 45 ECAB 595 (1994).

³ *Guides*, at page 3/84.

The decisions of the Office of Workers' Compensation Programs dated December 1 and April 14, 1995 are hereby affirmed.

Dated, Washington, D.C.
February 20, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member