

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY R. DUNCAN and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, Tex.

*Docket No. 96-1319; Submitted on the Record;
Issued February 18, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

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

The Office of Workers' Compensation Programs accepted that appellant sustained lumbar sprain, right knee sprain and right hip sprain due to a traumatic injury on October 31, 1990. Appellant stopped work on November 15, 1990 and did not return. The Office authorized an anterior cervical discectomy at C5-6 and C6-7 which was performed on January 20, 1992 and paid her compensation for total wage-loss disability.

On March 16, 1995 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) requesting a schedule award.

By letter dated April 25, 1995, the Office requested that Dr. R.J. West, a Board-certified orthopedic surgeon and appellant's attending physician, evaluate the extent of any permanent impairment to her lower extremity in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993).

In a report dated May 19, 1995, Dr. West opined that appellant reached maximum medical improvement on May 12, 1995. Dr. West noted that appellant had bilateral carpal tunnel syndrome, probably due to prolonged typing in the course of her federal employment.¹ He stated:

“The only lower extremity impairment noted is moderately severe patellar and medial condyle chondromalacia of the right knee. Under Table 36, Disorder 5,

¹ The Office found that appellant's carpal tunnel syndrome and de Quervain's syndrome was not due to her October 31, 1990 employment injury and recommended that she file an occupational disease claim for her hand and wrist problems.

this represents [a] 10 [percent] impairment of the extremity or 4 [percent] whole person according to the A.M.A., *Guides*, [t]hird [e]dition.”

Dr. West noted that appellant had “no atrophy, loss of motion or specific disorder other than chondromalacia of the patella. In the [f]ourth [e]dition, Table G2, ‘Arthritis,’ [appellant] has a cartilage interval of two [millimeters], which comes to a four [percent] whole body also.” Dr. West concluded that appellant had a four percent whole body impairment.

By letter dated November 21, 1995, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Richard Wilson, a Board-certified orthopedic surgeon, for a second opinion evaluation. The Office requested that Dr. Wilson determine whether appellant remained disabled due to her employment injury and whether she had a permanent disability of her right knee in accordance with the A.M.A., *Guides*.

In a report dated December 5, 1995, Dr. Wilson opined that appellant had reached maximum medical improvement about a year prior. He stated:

“I believe there is an impairment of the right knee due to reduction of the patellofemoral joint to two millimeters. This is clearly described as an impairment in Table 62, [p]age 83 of the [f]ourth [e]dition of the A.M.A., *Guides*. The 2 millimeter patellofemoral joint has a 10 [percent] lower extremity impairment rating, with a 4 [percent] [w]hole [b]ody.”

On January 15, 1996 an Office medical adviser reviewed Dr. Wilson’s December 5, 1995 report and concurred with his findings.

By decision dated January 31, 1996, the Office granted appellant a schedule award for a 10 percent impairment of her right leg. The period of the award ran for 28.80 weeks from February 4 to August 23, 1996.

Under section 8107 of the Federal Employees’ Compensation Act,² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

In a report dated May 19, 1995, appellant’s attending physician, Dr. West, a Board-certified orthopedic surgeon, found that appellant had chondromalacia and arthritis of the knee

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ *James J. Hjort*, 45 ECAB 595 (1994).

but no loss of motion or atrophy. He concluded that appellant had a four percent impairment of the whole person due to her accepted right knee injury. However, the Act does not provide a schedule award for a whole person impairment.⁵ Thus, Dr. West's opinion is of limited probative value because it was not derived in accordance with the standards of the A.M.A., *Guides*. The Office, therefore, properly referred appellant to Dr. Wilson for a second opinion evaluation.

In a report dated December 5, 1995, Dr. Wilson, a Board-certified orthopedic surgeon, found that appellant had a two percent reduction in the patellofemoral joint of the right knee which constituted a 10 percent impairment of the lower extremity according to Table 62 on page 83 of the A.M.A., *Guides*. The Office medical adviser reviewed Dr. Wilson's report and concurred with his finding of a 10 percent impairment of the right leg. As the report of Dr. Wilson conforms to the A.M.A., *Guides* and is supported by the opinion of the Office medical adviser, it constitutes the weight of the medical evidence.⁶

The decision of the Office of Workers' Compensation Programs dated January 31, 1996 is hereby affirmed.⁷

Dated, Washington, D.C.
February 18, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁵ 5 U.S.C. § 8107(c).

⁶ Following the Office' January 31, 1996 decision, appellant submitted additional medical evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

⁷ Appellant, in her appeal to the Board, requests compensation for wage-loss disability. However, the issue of disability compensation benefits, which are paid to reimburse an employee who has lost wages due to an injury, is separate from benefits for a schedule award. *Burnice Gish*, 33 ECAB 376 (1981). The only issue before the Board in the present appeal is whether appellant received the appropriate schedule award for a permanent impairment of her right lower extremity.