

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARTHA S. FLOWERS and RAILROAD RETIREMENT BOARD,  
BUREAU OF HEARINGS & APPEALS, Chicago, Ill.

*Docket No. 96-1114; Submitted on the Record;  
Issued May 7, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent permanent impairment to her right leg, for which she received a schedule award.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral strain, right knee strain, and a right medial meniscus tear in the performance of duty on March 25, 1993. By decision dated January 30, 1995, the Office issued a schedule award for a two percent permanent impairment of the right leg. An Office hearing representative affirmed the schedule award in a decision dated February 6, 1996. By decision dated March 27, 1996, the hearing representative again affirmed the January 30, 1995 decision.

The Board finds that appellant has not established more than a two percent permanent impairment of the right leg.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a 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>1</sup> Neither the Act nor the regulations specify the manner in 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8107. 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. § 10.304(b).

<sup>2</sup> A. George Lampo, 45 ECAB 441 (1994).

In this case, the attending physician, Dr. David F. Beigler, an orthopedic surgeon, submitted a form report (Form CA 1303) dated October 10, 1994 recommending an impairment rating of 40 percent of the right leg for weakness, atrophy, pain or discomfort. The case record was referred to an Office medical adviser, who noted in a December 8, 1994 memorandum that appellant had medical meniscus surgery on September 28, 1993. The medical adviser indicated that the 120 degrees of knee flexion reported by Dr. Beigler would not result in an impairment under Table 41 of the *Guides*.<sup>3</sup> With regard to the meniscus surgery, the medical adviser indicated that a partial medial meniscectomy resulted in a two percent impairment under Table 64.<sup>4</sup> As to the 40 percent figure provided by Dr. Beigler, the medical adviser found there was no explanation for this calculation.

In a report dated January 3, 1996, Dr. Beigler stated that appellant had a total impairment of 22 percent under the *Guides*. The probative value of this report is limited, however, by the lack of a detailed description of the impairment<sup>5</sup> or any reference to specific provisions in the *Guides* for determining the percentage of permanent impairment to the leg. Dr. Beigler reported that appellant had “an antalgic (or painful) gait,” without further discussion as to permanent impairment. He did not provide new range of motion results, and as noted above, the previous results would not indicate an impairment based on loss of motion. Dr. Beigler reported strength in the quadriceps muscles “is down graded one grade due to the observed weakness I have noted in the past,” without explaining whether he assigned a percentage impairment due to weakness, and if so, identifying the specific tables or provisions in the *Guides*. He also stated that appellant had a two millimeter joint space, again without explanation.<sup>6</sup>

In the absence of a more complete description of the impairment or reference to applicable sections of the *Guides*, the Board finds that Dr. Beigler’s January 3, 1996 report is not sufficient to establish more than a two percent permanent impairment to the right leg.

The decisions of the Office of Workers’ Compensation Programs dated March 27 and February 6, 1996 are affirmed.

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<sup>3</sup> A.M.A., *Guides* (4th ed. 1993), 78, Table 41 provides an impairment rating for flexion of less than 110 degrees.

<sup>4</sup> A.M.A., *Guides*, 85, Table 64. A partial medial meniscectomy is assigned a two percent impairment to the leg.

<sup>5</sup> Office procedures require that the medical evidence must include a detailed description of the impairment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

<sup>6</sup> Table 62 (at page 83), for example, provides for arthritis impairments based on roentgenographically determined cartilage intervals, but it is not clear whether Dr. Beigler used this table in his calculations. The Board notes that the x-rays needed to support a rating under Table 62 are described at page 82 of the *Guides*; see also FECA Bulletin No. 96-17 (issued September 20, 1996).

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

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member