

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD D. WILSON and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, Ohio

*Docket No. 96-1616; Submitted on the Record;
Issued May 7, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has more than a 35 percent permanent impairment of his left leg, for which he received schedule awards.

On February 1, 1983 appellant, then a 37-year-old carrier, sustained a knee injury while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for a strain of the left knee, internal derangement, chondromalacia of the femoral condyles of the left knee and laxity of the medial collateral ligament in the left knee. Appellant filed claims for recurrence of disability on March 3 and 23, 1983 which were both accepted by the Office. Appellant underwent knee surgery in April 1983.

On February 18, 1984 appellant filed a claim for a schedule award. On March 28, 1984 the Office issued appellant a schedule award for a seven percent permanent impairment of his left leg. The period of the award ran from February 27 to July 17, 1984 and he received 20.16 weeks of compensation. Appellant stopped work on March 6, 1984 and resigned from his position on November 19, 1984. By letters dated November 28, 1984 and February 7, 1985, appellant requested modification of his schedule award, noting that he was in constant pain. In a memorandum dated March 7, 1985, the Office rejected appellant's request for an additional schedule award. On January 4, 1988 appellant requested an additional schedule award. By decision dated November 28, 1990, the Office modified appellant's March 28, 1984 schedule award. Appellant received an award for an additional 23 percent permanent impairment of the left leg for 66.24 weeks of compensation covering the period of August 21, 1989 to November 28, 1990.

On July 28, 1992 appellant filed a claim for recurrence of disability beginning July 20, 1992. On November 6, 1992 the Office approved a course of physical therapy for appellant in relation to residuals of his February 1, 1983 employment injury. On January 31, 1993 appellant filed another schedule award claim. By decision dated August 24, 1993, the Office issued appellant a schedule award for an additional five percent permanent impairment of

the left leg. The period of the award ran from May 11 to August 19, 1993 and was for 14.4 weeks of compensation.

In a decision dated December 7, 1993, the Office denied appellant's claim for total disability on the grounds that there was no medical evidence to support his claim that he was totally disabled in relation to his left leg condition.

In a letter dated October 11, 1995, appellant requested additional assistance with his left knee condition, asserting that he was in continuous pain and that his leg had started collapsing. The Office interpreted this letter as a request for modification of appellant's schedule awards and requested that he arrange an examination with his physician for the purpose of evaluating his impairment.

By decision dated January 9, 1996, the Office denied appellant's request for an additional schedule award.

The Board finds that appellant has not established that he has greater than a 35 percent permanent impairment of the left leg.¹

Section 8107 of the Federal Employees' Compensation Act² and its implementing regulation³ 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 third edition, revised of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* had been adopted by the Office at the time appellant's original schedule award was issued, and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.⁴

In the present case, appellant submitted a report dated October 31, 1995 by Dr. Curtis W. Smith, an orthopedic surgeon and appellant's attending physician. In his report, Dr. Smith noted that appellant returned for reevaluation of his industrial injury to the left knee as he had continual pain in the left joint without further trauma. He reported that there was mild effusion and crepitus in the patellofemoral joint, the ligamentous examination was stable and the active range of motion was 0 to 100 degrees on the left side and normal on the right side. Dr. Smith indicated that September 6, 1995 magnetic resonance imaging (MRI) scan revealed subcondral

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on April 30, 1996, the only decisions before the Board is the Office's January 9, 1996 decision; see 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.304.

⁴ *Quincy E. Malone*, 31 ECAB 846 (1980).

degenerative changes of the patellofemoral joint consistent with the prior injury pattern, and he diagnosed internal derangement with post-traumatic degeneration. Dr. Smith report that “[b]ecause of his limitation of function secondary to pain and the sensation of giving way accompanied by loss of motion, he exhibits significant limitations of function.” He concluded that “[appellant’s] condition has further deteriorated since his last evaluation and his permanent ... disability is now presently measured at 50 [percent] with respect to the left knee joint.”

The Office medical adviser properly applied the third edition revised of the A.M.A., *Guides* to the October 31, 1995 report of Dr. Smith and correctly determine that appellant had no more than a 35 percent permanent impairment of the left leg. He noted that the continued pain in the knee was an impairment of the peroneal nerve deficit which translated to a maximum impairment of five percent in Table 51 of the A.M.A., *Guides*.⁵ In grading this pain and its interference with appellant’s activities, the Office medical adviser found it to be a Class 3 pain under Table 3 of the A.M.A., *Guides*.⁶ Since this was the equivalent of a maximum of 60 percent sensory impairment, he calculated that 60 percent of 5 percent is the equivalent of a 3 percent permanent impairment. The Office medical adviser related the popping and snapping in appellant’s joint to synovitis and arthritis and found a 10 percent loss at Table 40 of the A.M.A., *Guides*.⁷ He indicated that appellant’s crepitus in the patellofemoral joint and the mild effusion reported by Dr. Smith was included in the previous measurement for synovitis. Since appellant’s ligaments were stable, the Office medical adviser found no loss in that regard. With respect to range of motion, the Office medical adviser found that the reported flexion of up to 100 degrees was the equivalent of an 18 percent impairment as indicated in Table 39 of the A.M.A., *Guides*.⁸ As Dr. Smith did not provide any other measurable impairments for appellant, the Office medical adviser combined the aforementioned measured impairments and concluded that appellant had a total loss of use in the left lower extremity of 29 percent. As the Office medical adviser properly applied the A.M.A., *Guides* and thoroughly explained his calculation of impairment, the Board finds that this report constitutes the weight of medical opinion evidence since Dr. Smith failed to explain how his estimate of 50 percent impairment conformed to the A.M.A., *Guides*. Appellant has not established greater than a 35 percent permanent impairment of his left leg.

⁵ Table 51, Specific Unilateral Spinal Nerve Impairment Affecting the lower extremity, p.77, A.M.A., *Guides* (3d ed. rev., 1990).

⁶ Table 3, Grading Scheme and Procedure for Determining Impairment of Affected Body Part Due to Pain, Discomfort or Loss of Sensation, p. 112, A.M.A., *Guides* (3d ed. rev., 1990).

⁷ Table 40. Impairment ratings of the Lower Extremity For Other Disorders of the Knee, p. 68, A.M.A., *Guides* (3d ed. rev., 1990).

⁸ Table 39, Impairment Due to Amputation, Abnormal Motion and Ankylosis of the Knee Joint, p. 68, A.M.A., *Guides*, (3d ed. rev., 1990)

The decision of the Office of Workers' Compensation Programs dated January 9, 1996 is hereby affirmed.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member