

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUANITA HORNCLIFF and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, Calif.

*Docket No. 97-488; Submitted on the Record;
Issued September 15, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she has greater than a 14 percent permanent impairment for loss of use of the left leg, for which she received a schedule award.

On August 30, 1995 appellant, a 50-year-old clerk, injured her left knee when she stumbled and fell while walking across the street to an employee's parking lot. Appellant filed a Form CA-1 claim for compensation for traumatic injury on September 10, 1995, which the Office of Workers' Compensation Programs accepted for left knee strain. Appellant was examined on September 27, 1995 by Dr. Jerrald R. Goldman, a Board-certified orthopedic surgeon, who made a preliminary diagnosis of a torn lateral meniscus and scheduled appellant for a magnetic resonance imaging (MRI) scan on October 20, 1995. The MRI scan results confirmed a moderate sized effusion and torn lateral meniscus. Dr. Goldman performed arthroscopic surgery on appellant's knee on January 22, 1996, and, in a report dated April 8, 1996, released her to return to work on April 24, 1996.

On June 17, 1996 appellant filed a Form CA-7 claim for a schedule award based on partial loss of use of her left leg.

In a report dated August 29, 1996, Dr. Goldman calculated appellant's range of motion in her left knee by determining that she had 105 degrees flexion in her left knee as compared to 122 degrees flexion in her right knee; that she had negative 8 degrees extension in her left knee as compared with 0 to 2 percent extension in her right knee; that she had 2 degrees of weakness in her quadriceps with pain and lack of normal flexion, with slight swelling across her left patella. Dr. Goldman also found that appellant's right patella was about 16 and 5/8 to 16 and 1/4 inches in diameter, and that her left patella was about 18 and 5/8 to 18 and 1/2 inches in diameter. Dr. Goldman also noted mild arthritis in the left knee, and concluded that appellant reached maximum medical improvement in July 1996.

In a September 13, 1996 memorandum to the Office medical adviser, Dr. Leonard A. Simpson, an Office orthopedic consultant and specialist in orthopedic surgery, reviewed appellant's medical records and stated:

“This individual has pain that may interfere with activity that would be graded a maximal grade III according to the fourth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*.¹ This would translate to a 60 percent grade of a maximal 7 percent or the femoral nerve, equivalent to a 4.2 percent rounded off to 4 percent impairment. Records indicate the range of motion of -8 degrees extension through 105 degrees of flexion and according to Table 41, chapter three, same edition of the A.M.A., *Guides*, this would be considered mild or a 10 percent lower extremity impairment. Weakness secondary to pain would not be ratable and the difference in girths would indicate no measurable difference with a 0 percent impairment according to Table 37. Utilizing the Combined Values Chart, the 4 percent for pain factors combined with the 10 percent for the limited motion combined with a 0 percent for atrophy/weakness would be equivalent to a 14 percent impairment of the left lower extremity.”

On October 3, 1996 the Office granted appellant a schedule award for a 14 percent permanent impairment of the left upper extremity for the period from July 1, 1996 to April 9, 1997, for a total of 40.32 weeks of compensation.

The Board finds that appellant has no more than a 14 percent permanent impairment for loss of use of her left leg, for which she has received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁴ However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (4th ed.) have been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.⁵

¹ See A.M.A., *Guides* (4th ed.).

² 5 U.S.C. §§ 8101-8193; see 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.304.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

In the instant case, the Office determined that appellant had a 14 percent permanent impairment of her left leg by adopting the findings of Dr. Simpson, the Office orthopedic consultant, who determined the precise impairment rating by gauging the lack of full flexion and full extension, together with pain in the femoral nerve, in appellant's left leg based on the applicable figures and table of the A.M.A., *Guides*.

The Board concludes that Dr. Simpson, the Office orthopedic consultant, correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 14 percent permanent impairment for loss of use of the left leg, for which she has received a schedule award from the Office, and that appellant has failed to provide probative, supportable medical evidence that she has greater than the 14 percent impairment already awarded.

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 3, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 15, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member