

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of V. ELIZABETH AYN and U.S. POSTAL SERVICE,
POST OFFICE, Norwalk, CT

*Docket No. 98-315; Submitted on the Record;
Issued December 20, 1999*

DECISION and ORDER

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

The issue is whether appellant has more than an eight percent impairment of her right leg, for which she received a schedule award.

On May 14, 1987 appellant, then a 37-year-old part-time letter carrier, sustained an injury when she tripped while exiting from her mail truck. The Office of Workers' Compensation Programs accepted appellant's claim for a right knee injury with a meniscal tear. She was treated by Dr. Arthur Brovender, an orthopedic surgeon, for internal derangement of the knee. Appellant underwent surgery on July 6, 1987 for a lateral meniscal tear.¹ She was subsequently treated by Dr. Jans H. Hermann, an orthopedic surgeon and a second surgery was performed on September 20, 1988 for partial resection of the lateral meniscus.² Appellant subsequently filed a claim for a schedule award.

By letter dated December 16, 1994, the Office requested Dr. Jeffrey V. DeLuca, appellant's attending Board-certified orthopedic surgeon, to determine the nature and extent of any permanent impairment to her right knee. In a January 3, 1995 response, he noted that appellant has reached maximum medical improvement as of that date. Dr. DeLuca stated that appellant had pain with prolonged standing and walking and found flexion of the right knee to 140 degrees and 0 (zero) degrees extension. He concluded that appellant had "a whole body rating of her knee from both a partial medial and lateral meniscectomy of 4 percent and 10 percent to the lower extremity and, according to the arthritis chart, a 3 percent whole body and a

¹ The surgical report noted the medial femoral condyle and medial tibial plateau were normal in appearance with no roughness or signs of arthritic changes. The medial meniscus was probed several times and was found not to be loose and no tears were seen. The anterior cruciate was normal in appearance. The lateral meniscus was probed and a tear was found arising from the undersurface.

² The surgical report noted that inspection revealed an intact medial meniscus, with some minor debridement having been done on the extreme anterior horn of the medial meniscus. Inspection of the lateral compartment revealed a complex tear of the posterior horn of the lateral meniscus, which was resected.

7 percent lower extremity rating.” Dr. DeLuca concluded that the combined rating of these two disabilities resulted in a 17 percent impairment of the right lower extremity.

On January 27, 1995 Dr. Robert Y. Pick, a Board-certified orthopedic surgeon and Office medical consultant, reviewed the medical records. He noted that the ranges of motion reported by Dr. DeLuca did not result in any impairment rating under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Pick noted that the A.M.A., *Guides* allowed a two percent impairment for the lateral meniscectomy and resection, but noted that the surgical reports did not report any operation to the medial meniscus as was described by Dr. DeLuca. Dr. Pick concluded that the medical evidence did not indicate an impairment greater than two percent to appellant’s right lower extremity. He opined, however, that upon review of the medical file the only condition attributable to the accepted injury was a right knee contusion and that appellant’s surgeries were not due to the May 14, 1987 occupational incident.

On March 24, 1995 the Office referred appellant to Dr. Robert C. George, a Board-certified orthopedic surgeon, for further evaluation and an estimate of permanent impairment due to her employment injury. In an April 19, 1995 report, he found that appellant had reached maximum medical improvement following surgery in 1988 and indicated that there was no impairment due to loss of motion as the degree of retained flexion and retained active extension were both full. Dr. George recommended a 13 percent impairment of the right lower extremity due to weakness, atrophy, pain and discomfort.

Dr. George L. Cohen, a second Office medical adviser, reviewed Dr. George’s report and agreed with the conclusion that appellant had reached maximum medical improvement in December 1988 following her second surgery. He opined that appellant had two percent impairment of the right extremity for a partial lateral meniscectomy, based on Table 64 on page 85 of the A.M.A., *Guides*. Dr. Cohen noted that the surgical records described a partial lateral meniscectomy in 1987 and that there was no impairment of the medial compartment. The 1988 surgery consisted of a lateral meniscus resection. Dr. Cohen stated there was additional impairment for patellofemoral arthritis resulting in pain, identifying the affected nerve roots as the L3 and 4 from Figure 59 on page 93. He noted that the A.M.A., *Guides* provided a maximum value of 10 percent for impairment of the L3 and 4 nerve roots, Table 83 on page 130 and then applied Table 20 at page 151 to rate the pain as Class 3, which allows 60 percent for sensory impairment which interferes with activity. Dr. Cohen multiplied the 60 percent classification rating with the maximum 10 percent impairment value to calculate a 6 percent impairment of the right knee due to pain from patellofemoral arthritis. Applying the Combined Values Chart at page 322, Dr. Cohen determined that appellant had a total eight percent impairment of her right lower extremity when combining the impairment for pain with the rating for surgery.

On June 26, 1995 the Office granted appellant a schedule award for an eight percent impairment of her right lower extremity. The period of the award ran from December 10, 1988 through May 20, 1989.

On July 19, 1995 appellant requested a hearing before an Office hearing representative which was held on February 28, 1997. Following the hearing, appellant submitted a March 24, 1997 report from Dr. DeLuca. He stated that he had reviewed appellant’s September 20, 1988

operative report and noted that Dr. Hermann made mention of some minor debridement having been done in the past on the extreme anterior horn of the medical meniscus. Dr. DeLuca stated that he interpreted this as meaning a partial medial meniscectomy of the anterior horn, which he attributed to appellant's employment injury.

By memorandum dated May 12, 1997, the Office hearing representative requested review of the medical evidence by another Office medical adviser. In a May 20, 1997 memorandum, Dr. Neven A. Popovic, a third Office medical adviser, reviewed the record. He noted that most medical evaluators agreed that appellant should be awarded impairment for a partial lateral meniscectomy which, according to Table 64 at page 85, represented a two percent impairment of the lower extremity. Dr. Popovic disagreed with Dr. DeLuca's opinion that appellant sustained a partial medial meniscectomy as a factor to be taken into consideration in the impairment rating. He referred to the July 6, 1987 surgical report of Dr. Brovender which specifically noted that the medial meniscus was probed several times and was not found to be loose or reveal any tears. Dr. Popovic also noted that Dr. Brovender found the medial femoral condyle and medial tibial plateau to be normal in appearance with no signs of roughness or arthritic changes. Dr. Popovic noted that the question of the etiology of patellofemoral arthritis could be debated but that Dr. Cohen had given appellant the benefit of the doubt in assigning a six percent impairment of the lower extremity based on pain due to arthritis. Dr. Popovic noted that under the A.M.A., *Guides* an alternative method existed at Table 62, page 83 which could be used to assign a 10 percent rating for mild patellofemoral arthritis which, when combined with the 2 percent surgical rating, would allow for an 11 percent total impairment.

The Office hearing representative requested Dr. Popovic to clarify his opinion in light of FECA Bulletin No. 96-17, as to whether the x-rays referenced by the treating physicians constituted a "sunrise view," as required for the application of Table 62 at page 83 of the A.M.A., *Guides*. In a June 16, 1997 response, Dr. Popovic noted that many references to knee x-rays were made in the case record but he could find no specific mention of a true "sunrise view" taken at 40 degrees of flexion or on a true lateral view as required for the application of FECA Bulletin No. 96-17. Dr. Popovic concluded that, under Table 62 at page 83 of the A.M.A., *Guides*, a five percent impairment rating could be allowed for patellofemoral pain without joint space narrowing on x-ray. Applying the Combined Values Chart, Dr. Popovic opined that appellant had a seven percent impairment of her right lower extremity.

By decision dated July 30, 1997, the Office hearing representative affirmed the June 26, 1995 schedule award, finding that the weight of medical opinion did not support greater than an eight percent permanent impairment, as was awarded.

The Board finds that appellant has no greater than an eight percent impairment of the right lower extremity, for which she received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act set forth the number of weeks of compensation to be paid for permanent loss of the use of members of the body listed in the schedule. The Act, however, does not specify the manner in which the percentage loss of use of a member shall be determined. The method used in making such determinations is a matter which rests in the sound discretion of the Office. However, the Board has stated that 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.³

In determining the extent of impairment to appellant's right lower extremity due the accepted employment injury, the Board finds that the weight of medical opinion is represented by Dr. Cohen. He reviewed the medical evidence of record and noted that the reports of Drs. DeLuca and George did not indicate any impairment due to loss of range of motion in the right knee. With regard to the partial lateral meniscectomy, Dr. Cohen noted that Table 64 on page 85 of the A.M.A., *Guides* provides a maximum two percent impairment. He reviewed the surgical reports of Drs. Brovender and Hermann and noted that there was no support for a torn medial meniscus and both physicians had reported it intact and not revealing any tears. In assessing the extent of impairment due to pain from patellofemoral arthritis, Dr. Cohen identified the applicable sensory nerve roots from Table 59, page 93 as the L3 and 4 nerve roots. He then applied Table 83, page 130, to find that the maximum percentage loss of function due to sensory deficit or pain was 5 percent for the L3 nerve and 5 percent for the L4 nerve, or a total of 10 percent for both nerves. Dr. Cohen utilized Table 20 at page 151 to classify the impairment due to pain or sensory deficit as Class 3, which allows a maximum of 60 percent for sensory impairment. He multiplied the 60 percent classification rating with the maximum 10 percent impairment value to calculate a 6 percent impairment of the right knee due to pain from patellofemoral arthritis. Applying the Combined Values Chart with the two percent loss due to the partial lateral meniscectomy, Dr. Cohen determined appellant had a total of an eight percent impairment of the right lower extremity. The Board finds that Dr. Cohen's calculations conform with the guidelines and classification procedures found in the A.M.A., *Guides* and constitute the weight of medical opinion.

While Dr. Popovic noted that the A.M.A., *Guides* provide an alternative method of awarding impairment for patellofemoral arthritis at Table 62, page 83, based on x-ray determined cartilage intervals, the Office properly found that a rating could not be made using Table 62 because the x-rays of record pertaining to appellant's right knee did not constitute the appropriate "sunrise view" required for determining the necessary cartilage intervals under FECA Bulletin No. 96-17. As the x-rays of record are not of diagnostic importance in the application of Table 62, the Office properly determined that Table 62 should not be applied to rate appellant's right knee sensory impairment. The remaining medical reports of record do not conform to the protocols of the A.M.A., *Guides* and are therefore of diminished probative value.

³ See *Walter R. Malena*, 46 ECAB 983 (1995).

The July 30, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
December 20, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member