

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOMINICK A. VITALE and U.S. POSTAL SERVICE,
POST OFFICE, Southeastern, Pa.

*Docket No. 97-746; Submitted on the Record;
Issued February 9, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he has greater than a five percent permanent impairment of his right lower extremity, for which he has received a schedule award.

On February 23, 1993 the Office of Workers' Compensation Programs accepted that appellant, then a 36-year-old letter carrier, sustained aggravation of chondromalacia of his right knee, for which he underwent arthroscopic surgery.

On February 2, 1996 appellant filed a Form CA-7 claim for a schedule award for permanent impairment of his right lower extremity. Appellant alleged that his employment opportunities were restricted to sedentary positions, that he was unable to participate in sports or rigorous activity, that he could not enjoy life as other people his age did, and that he was limited in the activities he could undertake with his daughter. Appellant claimed that he was in pain daily, and that his only medical option was a total knee replacement.

Accompanying appellant's statement was a Form CA-20, attending physician's report, from Dr. William Spellman, a Board-certified orthopedic surgeon, which noted the diagnosis of degenerative joint disease of the medial compartment, noted treatment as including an arthroscopic chondroplasty of the right knee, crutches, a brace and anti-inflammatories, and noted that appellant would not be able to perform a job that required a large amount of walking. Permanent impairment was not discussed and no impairment rating was given.

On August 28, 1996 the Office referred appellant for a second opinion examination and for determination of any permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

By report dated September 16, 1996, Dr. Stephen M. Horowitz, a Board-certified orthopedic surgeon, reviewed appellant's medical records, examined appellant and opined that appellant was suffering from degeneration of the medial compartment of his right knee. He

noted that the right knee had a well-healed scar without evidence of effusion, that there was no thigh atrophy, that appellant had full range of motion of the right knee without evidence of instability and with good alignment, and that appellant's chief complaint was that of pain. Dr. Horowitz further noted that appellant could walk for five minutes without stopping and that he did not require the use of an assistive device. He opined that appellant could return to work with limited continuous walking and standing.

On November 1, 1996 the Office medical adviser reviewed Dr. Horowitz's report, noted that appellant had no permanent impairment for loss of range of motion, instability or muscular atrophy, and opined that, in accordance with the A.M.A., *Guides*, Table 62, page (pg.) 83, appellant had a five percent impairment of the right lower extremity due to pain from chondromalacia. He opined that the date of maximum medical improvement was September 16, 1996, the date of Dr. Horowitz's examination.

On November 8, 1996 the Office granted appellant a schedule award for 14.40 weeks of compensation for the period September 16 to December 25, 1996 for a total of five percent permanent impairment of his right lower extremity.

The Board finds that appellant has no greater than a five percent permanent impairment of his right lower extremity, for which he has received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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.³ However, neither the Act nor its regulations specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to ensure 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* has been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.⁴

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.⁵ All factors that prevent a limb from functioning normally should

¹ 5 U.S.C. § 8101 *et seq.*; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *Thomas D. Gauthier*, 34 ECAB 1060 (1983).

⁵ *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

be considered, together with the loss of motion, in evaluating the degree of permanent impairment. Chapter 15 of the A.M.A., *Guides* (fourth edition) provides grading schemes and procedures for determining impairment of an affected body part due to pain, discomfort or loss of sensation.⁶ The element of pain may serve as the sole basis for determining the degree of impairment for schedule compensation purposes.⁷

In the instant case, Dr. Spellman failed to provide any assessment of appellant's permanent impairment, noting only history, diagnosis and activity restrictions. Therefore, his report is not probative on the issue of permanent impairment.

Dr. Horowitz, however, addressed physical impairment, finding no permanent impairment due to loss of range of motion, misalignment, instability or muscular atrophy. The only ratable impairment identified by Dr. Horowitz was pain. Dr. Horowitz, however, failed to provide an opinion on impairment rating values in accordance with the A.M.A., *Guides* but he did provide physical examination results sufficient to enable the Office medical adviser to properly apply the A.M.A., *Guides*, Table 62, pg. 83, and to determine that appellant had a five percent permanent impairment due to pain. The Board finds that this application of the A.M.A., *Guides* was proper given the facts and the law in this case.

Further, no other probative medical evidence has been submitted to the record which supports any greater permanent impairment of the right lower extremity, based upon loss in range of motion, misalignment, instability or muscular atrophy. Although appellant, upon appeal, alleges permanent impairment due to surgeries, hypertension,⁸ having to return to school, being on welfare and food stamps, being unable to run and play or perform sports, being relatively young and undergoing mental stress, the Board notes that these factors are not included or considered when calculating a permanent impairment in accordance with the A.M.A., *Guides*. If, however, appellant should eventually undergo a total knee arthroplasty, he may be entitled to a further schedule award.

⁶ A.M.A., *Guides* 303 (4th ed. 1993); *see also* Chapter 3.1(k); Table 11, pg. 48; Tables 13 & 14, pgs. 51-52; Table 15, pg. 54; Chapter 3.2(k); Table 62, pg. 83; Table 69, pg. 89.

⁷ *Paul A. Toms*, 38 ECAB 403 (1987); *Robin L. McClain*, 38 ECAB 398 (1987).

⁸ The Board notes that neither hypertension nor mental stress are ratable impairments under the compensation schedules provided in 5 U.S.C. § 8107 or 20 C.F.R. § 10.304.

Consequently, the decision of the Office of Workers' Compensation Programs dated November 8, 1996 is hereby affirmed.

Dated, Washington, D.C.
February 9, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member