

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEE B. HAGAN and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, N.J.

*Docket No. 97-1278; Submitted on the Record;
Issued January 27, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he has greater than a five percent permanent impairment of his left lower extremity,¹ for which he has received a schedule award.

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the December 11, 1996 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

On appeal appellant's representative argued that Dr. David Weiss, an osteopath, found that appellant had a 17 percent permanent impairment of his left lower extremity with 5 percent for pain and crepitation added to 12 percent for muscle weakness, that there was a conflict in medical opinion between the Office medical adviser and Dr. Weiss which required resolution, that the Federal Employees' Compensation Act Bulletin 95-17 did not preclude the use of Table 39, page 77 and Table 62, page 83 and that appellant should be entitled to the benefit of the doubt with the greater impairment for muscle strength deficit being used instead of the impairment for pain and crepitation.

The Board, however, finds that Dr. Weiss did not follow the American Medical Association, *Guides to the Evaluation of Permanent Impairment* procedures for calculating appellant's impairment when he combined impairments for pain and crepitation with impairment for muscle weakness, that, therefore, Dr. Weiss' 17 percent impairment is not correct, that consequently there is no conflict in medical opinion and that FECA Bulletin 95-17 does indeed contain an attachment, which specifically mentions Tables 39 and 62 and explains that they must not be used in conjunction with each other in determining impairment ratings. Further, the

¹ Appellant's claim was accepted for left knee contusion and temporary aggravation of preexisting degenerative arthritis, for which he underwent left knee arthroscopic surgery.

Board notes that the five percent impairment award is based upon appellant's primary injury residual complaints and presenting residual symptoms noted in Dr. Weiss' January 3, 1995 report, namely left knee pain and stiffness, knee swelling and instability and crepitus. Therefore, it is the appropriate award. Although Dr. Weiss additionally stated, without explanation or medical rationale describing causal relation with a left knee contusion, that appellant had quadriceps weakness, he also noted that appellant's gait was symmetrical and normal and that he was able to get on and off the examination table without difficulty, which one would not expect with significant quadriceps weakness. This lack of causal relationship rationale coupled with the observational inconsistencies, diminishes the probative value of Dr. Weiss' opinion on the issue of quadriceps weakness. Additionally, appellant had no complaints of quadriceps weakness. Further, no other medical reports of record, either preceding or succeeding Dr. Weiss' report, mention any degree of quadriceps weakness being present. Therefore, the Board must conclude that appellant has no significant permanent impairment due to quadriceps weakness causally related to his left knee contusion injury entitling him to a schedule award and that the five percent permanent impairment due to left knee pain and crepitus is correct.

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 11, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 27, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member