

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELEANOR A. MATTHIAS and U.S. POSTAL SERVICE,
POST OFFICE, Denver, Colo.

*Docket No. 97-1315; Submitted on the Record;
Issued January 8, 1999*

DECISION and ORDER

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

The issue is whether appellant has more than a 13 percent permanent impairment of her right leg and a 15 percent permanent impairment of her left leg for which she received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than a 13 percent permanent impairment of her right leg and a 15 percent permanent impairment of her left leg for which she received a schedule award.

The Board reviewed this case on appeal on April 19, 1996.¹ By that decision, the Board found that the Office of Workers' Compensation Programs should undertake further development of appellant's claim to determine the extent of her permanent impairment due to arthritis. The facts and circumstances of the case as set forth in the Board's prior decision are adopted herein by reference. Following the Board's April 19, 1996 decision, the Office undertook further development of appellant's claim and denied increased schedule awards by decision dated January 13, 1997.

Section 8107 of the Federal Employees' Compensation Act² provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the*

¹ Docket No. 94-1733.

² 5 U.S.C. §§ 8101-8193, 8107.

*Evaluation of Permanent Impairment*³ as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

Following the Board's April 19, 1996 decision, the Office requested a supplemental report from appellant's attending physician, Dr. W. William A. Cox, a Board-certified orthopedic surgeon. The Office presented Dr. Cox with a form letter and a report to complete in accordance with the fourth edition of the A.M.A., *Guides*.

In a report dated July 26, 1996, Dr. Cox found that x-rays demonstrated well-maintained joint spaces including the patellafemoral joint. He stated that he believed that appellant had more arthritic changes in her knee with some detritus. Dr. Cox did not attempt to correlate his findings with the A.M.A., *Guides* and did not offer an additional impairment rating.

The Office medical adviser reviewed Dr. Cox's report on January 13, 1997 and found that the report was not sufficient for an impairment rating. He stated that as the fourth edition of the A.M.A., *Guides* provided for evaluation of arthritis based on joint spaces⁵ and as appellant's x-rays demonstrated well-maintained joint spaces, there was no evidence for an additional impairment rating in accordance with the A.M.A., *Guides*.

Board cases are clear that if an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. In such cases, the Office may rely on the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.⁶ In this case, the Office requested a supplemental report from Dr. Cox and he failed to correlate his findings with the A.M.A., *Guides*. The Office referred Dr. Cox's report to the Office medical adviser who reviewed the report and the appropriate provision of the A.M.A., *Guides*. The Office medical adviser concluded that Dr. Cox's findings did not support impairment due to arthritis in accordance with the A.M.A., *Guides*. As there is no medical evidence in the record correlated with the appropriate provisions of the A.M.A., *Guides* which supports additional impairment, the Office properly denied appellant's claim.

³ A.M.A., *Guides* (4th ed. 1993).

⁴ A. *George Lampo*, 45 ECAB 441, 443 (1994).

⁵ A.M.A., *Guides*, 82.

⁶ *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

The decision of the Office of Workers' Compensation Programs dated January 13, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 8, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member