

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DWIGHT CORBIN and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Philadelphia, Pa.

*Docket No. 97-1716; Submitted on the Record;
Issued January 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he has more than a 20 percent permanent impairment of his left lower extremity, for which he received a schedule award.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision regarding whether appellant has more than a 20 percent permanent impairment of his left lower extremity, for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.³

Section 8107 of the Act 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.⁴ 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 of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the*

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

Evaluation of Permanent Impairment (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

In the present case, the Office accepted that appellant sustained an employment-related torn meniscus of his left knee on January 29, 1984. On March 24, 1986 appellant received a schedule award for a 20 percent permanent impairment of his left lower extremity and, by decision dated March 28, 1996, the Office declined to amend the prior award to reflect additional permanent impairment. Following an oral hearing held at appellant's request, an Office hearing representative issued a decision dated January 30, 1997, affirming the prior decision finding no additional impairment.

In support of his request for an additional schedule award for his left knee, appellant submitted a medical report from Dr. Davis Weiss, an osteopath. In his report dated September 29, 1993, Dr. Weiss noted that appellant's left knee was tender in places, that appellant experienced pain and crepitus with range of motion and that appellant had mild atrophy and weakness in his left quadriceps muscle. Dr. Weiss diagnosed status post tear of the medial meniscus, left knee; status postarthroscopy, left knee; status postmedial meniscectomy, left knee; and post-traumatic osteoarthritis, left knee. Based on his examination and findings, Dr. Weiss stated that based on the A.M.A., *Guides*, appellant had a total left lower extremity impairment of 46 percent.⁶

Based on the recommendation of its Office medical adviser, the Office referred appellant to Dr. Stephen M. Horowitz, a Board-certified orthopedic surgeon, for a second opinion examination. In his report dated July 12, 1994, Dr. Horowitz noted that although appellant complained of persistent pain, appellant had full range of motion in his left knee, with no crepitus or effusion and no atrophy of the quadriceps. Dr. Horowitz noted, however, that he did not have any of appellant's prior medical records pertaining to his left knee and would need to review these records before he could make an informed opinion. In a supplemental report dated September 22, 1994, following his receipt and review of the relevant medical evidence, Dr. Horowitz stated:

“If indeed he was developing degenerative arthritis of his knee possibly secondary to his meniscectomy, then there may need to be some increase in his disability. It would be very helpful to have recent films of his knee and possibly a [magnetic resonance imaging scan] MRI as well.

“Although he had significant complaints of discomfort upon questioning, it should be noted that evaluation of his knee was quite unremarkable. He had no evidence of quadriceps atrophy which would indicate that he is using his knee as much as the other and there were no other clear abnormalities on physical examination. It would therefore be quite helpful to have further diagnostic studies to see exactly where he is at this time.”

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁶ Dr. Weiss did not indicate which version of the A.M.A., *Guides* he used in determining the amount of appellant's impairment.

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence and has the obligation to see that justice is done. Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.⁷ As Dr. Horowitz, the Office second opinion physician, noted the possibility that appellant had developed post-traumatic osteoarthritis in his left knee, for which he could be entitled to an increase in his schedule award⁸ and further stated that it would be “quite helpful to have further diagnostic studies” in order to more accurately assess appellant’s condition, it is appropriate that appellant be further evaluated for a possible additional permanent impairment in this regard.

The case will be remanded to the Office for further evaluation of the permanent impairment of appellant’s left lower extremity in accordance with the appropriate standards of the A.M.A., *Guides*. This evaluation should include an assessment of appellant’s impairment as it relates to his left knee range of motion, partial medial meniscectomy and possible osteoarthritis.

The decision of the Office of Workers’ Compensation Programs dated January 30, 1997 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
January 26, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ See *Robert F. Hart*, 36 ECAB 186 (1984); *Isidore J. Gennino*, 35 ECAB 442 (1983).

⁸ See A.M.A., *Guides* 83, Table 62 (4th ed. 1993).