

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOAN E. MAZZAMARO and U.S. POSTAL SERVICE,  
POST OFFICE, Thomaston, CO

*Docket No. 97-1790; Submitted on the Record;  
Issued July 13, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has more than a 15 percent permanent impairment to her right leg.

In the present case, the Office of Workers' Compensation Programs issued a schedule award on March 14, 1995 for a 15 percent permanent impairment to the right leg.<sup>1</sup> An Office hearing representative affirmed the schedule award by decision dated July 11, 1996. Appellant then submitted an August 22, 1996 report from her attending physician, Dr. Gerald F. Cambria, a Board-certified orthopedic surgeon. By decision dated January 31, 1997, the Office denied modification of the schedule award.

The Board has reviewed the record and finds that appellant has not established more than a 15 percent permanent impairment.

Section 8107 of the Federal Employees' Compensation 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.<sup>2</sup> 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 Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>3</sup>

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<sup>1</sup> The accepted conditions in this case are a right knee contusion, torn meniscus and lumbar strain.

<sup>2</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

<sup>3</sup> A. George Lampo, 45 ECAB 441 (1994).

In this case there is no dispute that Dr. Cambria reported knee flexion of 90 degrees. An Office medical adviser, in a February 12, 1995 memorandum, found that under Table 41 of the A.M.A., *Guides* (4<sup>th</sup> ed.), this resulted in a 10 percent impairment to the leg. Dr. Cambria, however, indicated in his August 22, 1996 report that he also used Table 41 and the impairment for 90 degrees of knee flexion was 17 percent.

Table 41 provides three categories of impairment for knee flexion: mild, moderate and severe.<sup>4</sup> For knee flexion of less than 110 degrees, the table indicates that this is a mild impairment of 10 percent to the leg; under 80 degrees is a moderate impairment of 20 percent, and less than 60 degrees is a severe impairment of 35 percent. The Board notes that Table 41 specifically provides an additional 2 percent impairment for every 10 degrees less than 60 degrees. It does not, however, provide a similar adjustment for the mild or moderate categories. In other words, the table does not provide for an additional impairment above 10 percent in the mild category for knee flexion that is less than 110 degrees but not less than 80 degrees. Dr. Cambria apparently interpreted Table 41 to allow such additional impairment, since he assigns an impairment of 17 percent for 90 degrees of flexion. Table 41 could have provided for an additional impairment in the mild category, as it does for the severe category, but it does not. The Board accordingly finds that the Office medical adviser's interpretation of Table 41 appears to be the correct one: that for knee flexion of less than 110 degrees but not less than 80 degrees, the impairment is 10 percent.

With regard to weakness, the Office medical adviser used Table 68 for the femoral nerve, which has a maximum of 37 percent, and graded the impairment at 15 percent for a total of 6 percent.<sup>5</sup> Combining 10 percent for loss of range of motion and 6 percent for weakness under the Combined Values Chart results in a 15 percent impairment.<sup>6</sup>

Dr. Cambria stated in his August 22, 1996 report that appellant had an 8 percent impairment for weakness based on Table 39 of the A.M.A., *Guides*. He does not, however, explain how he used Table 39 to arrive at an 8 percent impairment in this case. Accordingly, the Board finds that the probative evidence of record does not establish that appellant had more than a 15 percent permanent impairment in this case.

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<sup>4</sup> A.M.A., *Guides*, 78, Table 41.

<sup>5</sup> A.M.A., *Guides*, 89, Table 68.

<sup>6</sup> *Id.*, 322, 24. The A.M.A., *Guides* note that the method for combining impairments is based on the idea that a second or succeeding impairment should apply not to the whole, but only to the part that remains after the first impairments have been applied.

The decisions of the Office of Workers' Compensation Programs dated January 31, 1997 and July 11, 1996 are affirmed.

Dated, Washington, D.C.  
July 13, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member