

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID J. MAITLAND and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, N.J.

*Docket No. 97-1715; Submitted on the Record;
Issued March 19, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he has more than a five percent permanent loss of use of the left lower extremity 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 decision of the Office of Workers' Compensation Programs' hearing representative, dated January 27, 1997 and finalized on January 30, 1997, 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 alleges that there is a conflict in the medical opinion evidence between appellant's treating physician, Dr. David Weiss, an osteopathic physician, who opined that appellant had a 17 percent permanent impairment of the left leg and the Office's second opinion physician, Dr. Robert R. Bachman, who concluded that appellant had a 5 percent permanent impairment of the left lower extremity. The Board notes in this regard that both Dr. Weiss and Dr. Bachman reported that appellant had a 5 percent permanent impairment of the left leg pursuant to the footnote to Table 62, page 83 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition). This footnote states that "In a patient with a history of direct trauma, a complaint of patellofemoral pain, and crepitation on physical examination, but without joint space narrowing on roentgenograms, a two percent whole-person or five percent lower-extremity impairment is given." The Board concurs that appellant's patellofemoral impairment entitles him to a five percent permanent impairment rating pursuant to Table 62. Dr. Weiss, however, also assigned a 12 percent permanent impairment rating to appellant's loss of muscle strength pursuant to Table 39 of the A.M.A., *Guides*. The Office's procedure manual explains that when evaluating permanent impairment pursuant to the fourth edition of the A.M.A., *Guides*, when a table based upon a specific diagnosis is used, no additional increment for pain or loss of strength should be included in the

determination of impairment.¹ The procedure manual provides a chart of impairment tables which are incompatible. This chart states that Table 62 is incompatible with Table 39.² Since Table 62 is incompatible with Table 39, one or the other should be used to evaluate the impairment, but not both. Dr. Weiss opined that appellant would be entitled to a 12 percent permanent impairment for his loss of muscle strength pursuant to Table 39. The A.M.A., *Guides* own instructions to the use of Table 39 state that because manual muscle testing is dependent on the patient's cooperation and is subject to the patient's conscious and unconscious control, the results should be concordant with observable pathologic signs, other medical evidence and the measurement should be consistent between two trained observers. Further, if the measurements are made by one examiner, they should be consistent on different occasions.³ There is no evidence of record that more than one manual muscle testing examination has been performed in this case of appellant's left knee, or that the one evaluation performed was observed by two trained professionals. The Office therefore properly selected the use of Table 62, rather than Table 39 of the A.M.A., *Guides*.

The decision of the Office of Workers' Compensation Programs dated January 27, 1997 and finalized January 30, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 19, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹ See FECA Transmittal No. 96-04 (October 1995).

² *Supra* at Exhibit 4.

³ A.M.A., *Guides* (4th ed.) at page 76.