

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, City of Industry, Calif.

*Docket No. 97-2044; Submitted on the Record;
Issued May 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than 18 percent permanent impairment of his right leg for which he received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than 18 percent permanent impairment of his right leg for which he received a schedule award.

Appellant filed a claim on October 22, 1992 alleging that he fell in the performance of duty injuring his left knee. The Office of Workers' Compensation Programs accepted appellant's claim for left knee strain and medial meniscus tear left knee with surgery. The Office granted appellant a schedule award for 27 percent permanent impairment of the left leg on May 10, 1995. Appellant filed a claim for occupational disease on April 20, 1995 alleging that he developed degenerative knee disease. The Office accepted his claim for bilateral degenerative joint disease of the knees and authorized surgery on April 11, 1996. Appellant requested a schedule award on December 6, 1996 and by decision dated May 6, 1997 the Office granted appellant a schedule award for 18 percent impairment of the right leg.

Section 8107 of the Federal Employees' Compensation Act¹ 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 5 U.S.C. § 8107.

*Evaluation of Permanent Impairment*² as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

Appellant's attending physician, Dr. Mark S. Ishimaru, a Board-certified orthopedic surgeon, completed a report on December 6, 1996. He diagnosed torn medial meniscus and torn anterior cruciate ligament with subsequent repair in the right knee. Dr. Ishimaru noted appellant's history of injury and reported that appellant experienced occasional minimal pain at rest which increased to intermittent slight to moderate pain with activities of daily living. Dr. Ishimaru noted that on April 11, 1996 appellant underwent arthroscopic anterior cruciate ligament reconstruction and medial meniscectomy. He provided physical findings noting that appellant's right calf was 14 7/8 inches and his left calf was 15 inches; that appellant's right thigh was 20 1/2 inches and his left thigh was 21 inches. Dr. Ishimaru found appellant's anterior cruciate ligament demonstrated 1+ laxity on both the right and left. Appellant had 175 degrees of extension and 120 degrees of flexion on the right with slight tenderness around the incision. Dr. Ishimaru concluded that appellant had 37 percent impairment of the right lower extremity in accordance with the A.M.A., *Guides*. However, Dr. Ishimaru did not provide citations to the A.M.A., *Guides* in support of his impairment rating.

The Office referred Dr. Ishimaru's reports to Dr. Leonard A. Simpson, the Office orthopedic consultant. In a report dated March 7, 1997, Dr. Simpson noted Dr. Ishimaru's findings and correlated these with the A.M.A., *Guides*. He found that appellant's pain interfered with activity⁴ for 60 percent impairment of the femoral nerve⁵ or 4 percent impairment due to pain. Dr. Simpson noted that appellant's loss of range of motion included a mild loss of extension for 10 percent impairment.⁶ He noted that appellant's calf atrophy was not ratable under the A.M.A., *Guides*, but that appellant had a mild thigh atrophy for 5 percent impairment.⁷ Dr. Simpson utilized the Combined Values Chart and concluded that appellant had 18 percent impairment of the right lower extremity.⁸

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

² A.M.A., *Guides* (4th. ed. rev., 1993).

³ A. George Lampo, 45 ECAB 441, 443 (1994).

⁴ A.M.A., *Guides*, 48, Table 11.

⁵ *Id.*, 89, Table 68.

⁶ *Id.*, 78, Table 41.

⁷ *Id.*, 77, Table 37.

⁸ Dr. Simpson also noted that the A.M.A., *Guides* provide for a diagnosis based impairment rating. He utilized this method and concluded that as appellant would be entitled to 14 percent impairment under this method, the other method of calculating appellant's award should be used.

impairment. In such cases, the Office may rely on the advise of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.⁹ In this case, the Office properly relied on the report of Dr. Simpson as he provided a detailed explanation of how he reached the impairment rating and correlated Dr. Ishimaru's findings with the A.M.A., *Guides*. As there is no medical evidence providing citation to the A.M.A., *Guides* establishing that appellant has more than 18 percent impairment, the Board finds that the Office properly granted appellant a schedule award for 18 percent impairment of his right lower extremity.

The decision of the Office of Workers' Compensation Programs dated May 6, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 5, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).