

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY R. DREHMER and U.S. POSTAL SERVICE,
POST OFFICE, Buffalo, NY

*Docket No. 97-2564; Submitted on the Record;
Issued September 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has more than a 22 percent impairment of his left lower extremity for which he received schedule awards.

The Office of Workers' Compensation Programs accepted that appellant sustained a left ankle sprain, internal derangement of the left knee and degenerative arthritis of the left knee due to an injury on July 17, 1992.

On May 5, 1994 appellant filed a claim for a schedule award. By decision dated April 8, 1995, the Office granted appellant a schedule award for a 14 percent permanent impairment of the left lower extremity. The period of the award ran for 40.32 weeks from August 17, 1994 to May 26, 1995.

The Office further accepted that appellant sustained a contusion of the left knee on January 31, 1996. The Office combined the file for appellant's January 31, 1996 injury with the file for his July 17, 1992 injury.

On July 9, 1996 appellant filed a claim for an additional schedule award.

By letters dated July 24 and December 4, 1996, the Office requested that Dr. Steven Garner, a Board-certified orthopedic surgeon and appellant's attending physician, provide an impairment rating of appellant's knee in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fourth edition 1993).

By decision dated February 6, 1997, the Office denied appellant's claim for an increased schedule award on the grounds that he had submitted no evidence in support of his claim.¹

By letter dated May 1, 1997, appellant requested reconsideration of his schedule award claim. In support of his request, he submitted a report dated April 18, 1997, from Dr. Garner. Dr. Garner measured appellant's range of motion in his knee as 0 to 90 degrees and found that appellant had a loss of muscle strength in the quadriceps as well as some atrophy. He further found that appellant had pain and discomfort "along the medial joint line." Dr. Garner stated:

"Three centimeters of atrophy would translate into five [percent] atrophy of the whole person and thirteen [percent] disability of the lower extremity. Grade muscle strength in the knee in quadriceps and in extension would translate into 5 [percent] each, for a total of 10 [percent] loss of whole body and 24 [percent] loss of the knee, since it is in full flexion and extension. Knee impairment in flexion, with flexion less than 110 degrees translates into 4 [percent] loss of the whole body and 10 [percent] loss of the joint. Muscle weakness, flexion and extension would translate into 5 [percent] loss of the whole body for flexion and 5 [percent] for extension, for a total of 10 [percent], which would translate into 24 [percent] loss in the lower extremity. Ambulation with a cane all of the time plus an antalgic limp, which shortens stance phase, translates into whole person impairment of 20 [percent]."

He further indicated that appellant should receive some apportionment for arthritis of the medical femoral condyle.

An Office medical adviser reviewed Dr. Garner's April 18, 1997 report and opined that, pursuant to the A.M.A., *Guides*, 0 to 90 degrees of flexion -- extension constituted a 10 percent impairment.² He further determined that, according to Table 37 on page 77 of the A.M.A., *Guides*, 3 centimeters atrophy of the thigh constituted a 13 percent impairment.³ The Office medical adviser indicated that Table 37 of the A.M.A., *Guides*, entitled "impairments from leg muscle atrophy" should not be added or combined with findings from Tables 36, 38 and 39. He combined the 10 percent impairment due to loss of range of motion with the 13 percent impairment due to atrophy and concluded that appellant had a 22 percent impairment of the left lower extremity. The Office medical adviser noted that the A.M.A., *Guides* included pain in the above impairment ratings. He further found that appellant would be entitled to an impairment rating for arthritis pursuant to Table 62 only in the absence of other abnormalities.

¹ In a decision dated February 20, 1997, the Office found that appellant had no loss of wage-earning capacity based on his actual earnings as a city carrier. Appellant has not requested review of this decision, and therefore the Board will not review this aspect of appellant's claim in the instant appeal under 20 C.F.R. § 501.2(c).

² A.M.A., *Guides* 78, Table 41.

³ *Id.* 77, Table 37.

In decisions dated July 21, 1997, the Office vacated its February 6, 1997 decision and awarded appellant a schedule award for an additional eight percent impairment of his left lower extremity. The period of the award ran for 23.14 weeks from July 11 to December 19, 1996.

The Board finds that appellant has no more than a 22 percent permanent impairment of the left lower extremity for which he received schedule awards.

Under section 8107 of the Federal Employees' Compensation Act,⁴ and section 10.304 of the implementing federal regulations,⁵ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

The Office medical adviser properly applied the A.M.A., *Guides* to Dr. Garner's findings. The report of the Office medical adviser is the only medical report, which evaluated appellant's permanent impairment properly utilizing the A.M.A., *Guides* and thus constitutes the weight of the medical evidence.⁷ The Office medical adviser found that appellant had a 10 percent impairment due to loss of range of motion of the knee,⁸ and a 13 percent impairment due to atrophy of the thigh.⁹ He correctly noted that Table 37 of the A.M.A., *Guides* should not be used in combination with Tables 36, 38 and 39, which measure impairments of the lower extremity due to gait derangement, loss of muscle function and weakness.¹⁰ He further properly found that Table 62, which is used to determine the degree of impairment due to arthritis based on roentgenograph, should not be used with Table 37.¹¹ Further, as found by the Office medical adviser, the impairment percentages shown on the various organ systems already make

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.304.

⁶ *James J. Hjort*, 45 ECAB 595 (1994).

⁷ *Joseph Santaniello*, 42 ECAB 710 (1991).

⁸ A.M.A., *Guides*, 78, Table 41.

⁹ *Id.* at 77, Table 37.

¹⁰ The Office, in FECA Bulletin No. 95-17, issued March 23, 1995, stated that certain tables in Chapter 3 of the A.M.A., *Guides* are not to be used with other tables in the chapter because to do so would result in "overlapping applications, leading to percentages which greatly overstated the impairment." The bulletin specifies that Table 37 should not be used with Tables 36, 38 and 39 in determining impairment. FECA Bulletin No. 96-17, issued September 20, 1996, is the applicable bulletin in the instant case, and references the tables listed in FECA Bulletin No. 95-17. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exh. 4 at 4 (October 1995).

¹¹ *Id.*

allowance for the pain that may accompany the impairing conditions.¹² The Office medical adviser thus properly combined the 10 percent impairment due to loss of range of motion with the 13 percent impairment due to atrophy and concluded that appellant had a 22 percent impairment of the left lower extremity.

Accordingly, the Board finds that opinion of the Office medical adviser constitutes the weight of the medical evidence of record and establishes that appellant has no more than a 22 percent impairment of the left lower extremity, for which he has received schedule awards.

The decision of the Office of Workers' Compensation Programs dated July 21, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 16, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹² A.M.A., *Guides* at 152.