

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA McGONAGLE and U.S. POSTAL SERVICE,
POST OFFICE, Cape May Courthouse, NJ

*Docket No. 98-2444; Submitted on the Record;
Issued February 24, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 10 percent permanent impairment of the left lower extremity, for which she has received a schedule award.

The Board has duly reviewed the evidence of record in this appeal and finds that appellant does not have more than a 10 percent permanent impairment of the left lower extremity, for which she has received a schedule award.

On October 2, 1996 appellant, then a 43-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 1996 she experienced inflammation of the left knee which was slightly swollen as a result of tripping on a plastic tie loop and falling onto both knees while pushing a bungee cart up the ramp. She did not stop work.

By letter dated December 23, 1996, the Office of Workers' Compensation Programs accepted appellant's claim for a torn posterior horn medial meniscus.

Appellant stopped work on January 7, 1997 and underwent arthroscopic surgery on January 9, 1997. She returned to limited-duty work on February 14, 1997. Appellant returned to full duty on April 21, 1997.

On September 9, 1997 appellant, through her counsel, submitted medical evidence indicating that she had a 17 percent permanent impairment of the left lower extremity in support of her request for a schedule award.

On September 17, 1997 an Office medical adviser reviewed appellant's medical record and determined that she had a 10 percent permanent impairment of the left lower extremity.

By decision dated September 18, 1997, the Office granted appellant a schedule award for a 10 percent permanent impairment of the left leg for the period July 30, 1997 through February 16, 1998. In a September 29, 1997 letter, appellant, through her counsel requested an oral hearing before an Office representative. A hearing was held on March 25, 1998.

In a May 7, 1998 decision, the hearing representative affirmed the Office's September 18, 1997 decision.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation,² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.³ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

In support of her claim for a schedule award, appellant submitted the July 30, 1997 medical report of Dr. David Weiss, a Board-certified orthopedic surgeon, who provided a history of appellant's September 17, 1996 employment injury and medical treatment, appellant's complaints, his findings on physical examination and a review of medical records. Dr. Weiss diagnosed status post tear of the medial and lateral meniscus of the left knee, status post arthroscopy of the left knee, status post partial medial and lateral meniscectomy of the left knee and post-traumatic patellofemoral arthritis of the left knee. He noted subjective factors which included appellant's daily left knee pain and stiffness which was worse at night, ongoing swelling and weakness of the left knee joint and restrictions regarding appellant's activities. Dr. Weiss further noted objective factors which included well-healed portal arthroscopy scars about the knee and patellar crepitance. He also noted tenderness over the medial joint space, the medial and lateral midline and medial femoral condyle. Additionally, Dr. Weiss noted quadriceps atrophy, a circumference of the quadriceps of 59 centimeters on the left versus 61 centimeters on the right. Finally, he noted quadriceps muscle weakness at 4/5 on the left, that squatting was limited to 50 percent of normal and that range of motion was painful. Utilizing the fourth edition of the A.M.A., *Guides*, Dr. Weiss determined that crepitance with patellofemoral pain constituted 5 percent impairment based on Table 62, page 83 and quadriceps atrophy was 13 percent based on Table 37, page 77, for a total of 17 percent permanent impairment of the left lower extremity. The Office's procedure manual explains that when a table based upon a specific diagnosis is used in evaluating permanent impairment pursuant to the fourth edition of the A.M.A., *Guides*, no additional increment for pain or loss of strength should be included in the determination of impairment.⁵ The procedure manual provides a chart of impairment tables

¹ 5 U.S.C. §§ 8101-8193; see 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ See FECA Transmittal No. 96-04 (October 1995).

which are incompatible. This chart states that Table 62 is incompatible with Table 37.⁶ Since Table 62 is incompatible with Table 37, one or the other should be used to evaluate the impairment, but not both. Therefore, Dr. Weiss improperly applied the tables in the A.M.A., *Guides* to determine that appellant had a 17 percent permanent impairment of the left lower extremity.

An Office medical adviser reviewed appellant's medical records, including Dr. Weiss' July 30, 1997 medical report and determined that appellant's left knee meniscectomy medial and lateral partial resulted in a 10 percent lower extremity impairment based on Table 64, page 85 of the fourth edition of the A.M.A., *Guides*. The Office medical adviser stated that "FECA Bulletin No. 96-17 precludes the use of Table 37, page 77, in conjunction with Table 64 page 85. Table 62, which addresses impairment due to arthritis, may be used only if no other abnormality is present, with the exception of joint fractures." The Board concludes that the Office medical adviser properly applied the A.M.A., *Guides* in determining that appellant had a 10 percent permanent impairment of the left lower extremity.

The May 7, 1998 and September 18, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
February 24, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ The Office, in FECA Bulletin No. 95-17, issued March 23, 1995, stated that certain tables in 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 overstate the impairment." FECA Bulletin No. 96-17, issued September 20, 1996, which is the applicable bulletin in the instant case, references the tables listed in FECA Bulletin No. 95-17 without changes. Further the Office's procedure manual has implemented FECA Bulletin No. 95-17. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exh. 4 at 4 (October 1995).