

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOUGLAS L. SEISELMYER and U.S. POSTAL SERVICE,  
POST OFFICE, Clinton, NY

*Docket No. 99-823; Submitted on the Record;  
Issued July 3, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant is entitled to greater than a two percent permanent impairment of the right leg for which he received a schedule award.

On March 17, 1993 appellant, then a 39-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on March 10, 1993 he injured his knee when he stepped on snow covered ice while getting out of his truck and fell on his knee. The Office of Workers' Compensation Programs accepted the claim for a knee sprain and authorized arthroscopic surgery of the right knee.

Appellant returned to limited-duty work on October 21, 1994 and was permanently reassigned to a modified clerk position effective January 17, 1998.

In an attending physician's report dated April 10, 1998, Dr. Margaret R. Albanese, an attending Board-certified orthopedic surgeon, opined that appellant had a 30 percent impairment of his right knee.

On May 10, 1998 appellant filed a claim for a schedule award.

On June 8, 1998 the Office asked that appellant have his attending physician submit a report in conformance with the American Medical Association, (A.M.A.) *Guides to the Evaluation of Permanent Impairment* addressing permanent impairment due to his employment injury.

In a report received by the Office on June 30, 1998, Dr. Albanese noted flexion: affected vs. opposite as 125/140 and extension: affected vs. opposite as 0/+5, no ankylosis, a partial right medial meniscectomy and bone and cartilage damage of the patella media femoral condyle and medial tibial plateau.

Based upon a review of Dr. Albanese's report, an Office medical adviser on July 8, 1998 opined that appellant had a two percent impairment of his right knee. In reaching this conclusion, the Office medical adviser noted that pursuant to Table 41 at page 78 appellant had a 0 percent impairment based upon his flexion of 125 degrees and, according to Table 64 at page 85, a 2 percent impairment due to his partial medial meniscectomy, which resulted in a total impairment of the right lower extremity of 2 percent.<sup>1</sup>

By decision dated July 13, 1998, the Office issued appellant an award for a two percent impairment of his right leg.

The Board finds that appellant sustained no more than a two percent permanent impairment of the right leg for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and section 10.304 of the implementing federal regulations,<sup>3</sup> schedule awards are payable for the permanent impairment of specified body members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>4</sup>

However, neither the Act nor the regulations specify the method by which the percentage of impairment shall be determined.<sup>5</sup> The method used in making such determinations rests in the sound discretion of the Office.<sup>6</sup> For consistent results and to ensure equal justice for all claimants, the Office has adopted and the Board has approved, the use of the appropriate edition of the A.M.A., *Guides* as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.<sup>7</sup>

In this case, appellant argues that he is entitled to a 30 percent schedule award for his right knee because that was the impairment rating found by Dr. Albanese in her reports.

The Office medical adviser properly applied the fourth edition of the A.M.A., *Guides*, using the appropriate tables to calculate the percentage of permanent impairment. Thus, Table 41 on page 78 of the A.M.A., *Guides* show that a flexion of less than 110 degrees would be a mild impairment of 4 to 10 percent. The Office medical adviser correctly found 0 percent because appellant's flexion was more than 110 degrees. Similarly, using Table 64 on page 85 of

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<sup>1</sup> The Office medical adviser utilized the fourth edition of the A.M.A., *Guides*.

<sup>2</sup> 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> 5 U.S.C. § 8107(c)(19); *William Edwin Muir*, 27 ECAB 579, 581 (1976); see *Terry E. Mills*, 47 ECAB 309 (1996) (listing the members and organs of the body for which the loss or loss of use is compensable under the schedule award provisions).

<sup>5</sup> *A. George Lampo*, 45 ECAB 441, 443 (1994).

<sup>6</sup> See *surpa* note 5.

<sup>7</sup> *James J. Hjort*, 45 ECAB 595, 599 (1994).

the A.M.A., *Guides*, the Office medical adviser determined that appellant had sustained a two percent loss of use of his right lower extremity due to his partial meniscectomy. The report of Dr. Albanese failed to provide an estimate of impairment conforming to the protocols of the A.M.A., *Guides*.

Inasmuch as it is appellant's burden to provide medical evidence establishing his entitlement to a schedule award and the medical evidence in this case supports no rating greater than the two percent schedule award already received by appellant, the Board finds that the Office properly determined that appellant was entitled to no more than a two percent impairment rating.<sup>8</sup>

The decision of the Office of Workers' Compensation Programs dated July 13, 1998 is hereby affirmed.

Dated, Washington, D.C.  
July 3, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> See *Lena P. Huntley*, 46 ECAB 643, 646 (1995) (finding that the Office medical adviser's proper application of the A.M.A., *Guides* constituted the weight of the medical evidence).