

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMUEL B. GOODMAN and U.S. POSTAL SERVICE,
POST OFFICE, Clayton, MO

*Docket No. 99-1196; Submitted on the Record;
Issued July 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he has more than a two percent permanent impairment for the right lower extremity for which he has received a schedule award.

On April 13, 1993 appellant, then a 41-year-old letter carrier, filed claim for occupational injury alleging that he injured his right knee while in the performance of duty.

The Office of Workers' Compensation Programs on October 8, 1993 accepted appellant's claim for lateral meniscus tear, right knee.¹ On May 17, 1994 appellant filed a claim for schedule award.

In a medical report dated April 14, 1994, Dr. William T. Grant, appellant's treating physician and Board-certified in orthopedic surgery, stated that he had performed an "arthroscopic examination of the right knee and treatment of a complex lateral meniscus tear and a lateral femoral condyle chondral defect on June 8, 1993. He was treated with partial lateral meniscectomy and chondral debridement." Dr. Grant noted that: "On the basis of his identified pathology, permanent partial impairment at the level of the right knee is rated at 10 percent for the meniscal tear and 10 percent for the lateral femoral condyle defect. This creates a total permanent impairment to the right knee of 20 percent. He is felt to be at maximum medical improvement at this time."

On August 23, 1995 the Office medical adviser stated that the Office should refer appellant to a physician for an impairment rating based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). The Office medical adviser noted that Dr. Grant's rating was not based on the A.M.A., *Guides* and thus could not be used to determine appellant's impairment rating.

¹ The Office later included appellant's knee surgery as part of the accepted work-related injury.

On September 14, 1995 the Office referred appellant his medical records and a statement of accepted facts to Dr. John Gragnani, Board-certified in occupational medicine and physical medicine and rehabilitation, to determine appellant's impairment rating. In a report dated September 22, 1995, Dr. Gragnani recommended a two percent permanent impairment of appellant's right lower extremity. By decision the Office, on October 10, 1995, issued a schedule award of two percent for permanent impairment of appellant's right lower extremity.

Appellant, through counsel, thereupon requested an oral hearing which was held on September 17, 1996. At the close of the hearing, appellant submitted a September 19, 1996 supplemental medical report from Dr. James C. Strickland, Board-certified in orthopedic surgery, who noted that appellant's impairment rating was 32 percent for loss of the right lower extremity based on reference to the A.M.A., *Guides*.²

By decision dated December 20, 1996, the hearing representative found that the claim contained a conflict in medical opinion and remanded the claim to the Office for referral to an impartial medical examiner for resolution.³

The Office referred appellant on July 8, 1997 to Dr. Donald McPhaul, Board-certified in physical medicine and rehabilitation, as the impartial medical examiner.

In his report dated July 27, 1995, Dr. McPhaul noted appellant's history of injury and performed a physical examination with x-rays. He found that appellant's right knee had symmetrical thighs at 47 centimeters for a 0 percent impairment, 5 by 5 strength in the right hamstrings and quadriceps for a 0 percent impairment, 115 degrees of flexion for a 0 percent impairment, 180 degree full extension and no valgus/varus deformity noted for a 0 percent impairment. Regarding pain and sensory loss, Dr. McPhaul found pain interfering with activity at 60 percent sensory impairment "loss best fitting in femoral nerve distribution" of 2 percent sensory impairment. He then calculated that 60 percent of 2 percent was 1.2 or 1 percent impairment due to pain. Dr. McPhaul then determined that appellant's partial lateral meniscectomy resulted in a two percent right lower extremity impairment.⁴ He then noted that appellant's date of maximum medical improvement was December 31, 1993 as related by appellant in his history of injury.

On August 18, 1997 the Office awarded appellant a two percent permanent impairment of the right lower extremity. On September 10, 1997 appellant, through counsel, requested review of the written record. On January 13, 1998 the hearing representative affirmed the Office's August 18, 1997 decision awarding appellant a two percent permanent impairment of the right lower extremity.

² Dr. Grant moved to California. Appellant noted that the employing establishment referred him to Dr. Strickland who, in a November 30, 1995 report, found that appellant had a 32 percent permanent impairment but did not rely on the A.M.A., *Guides*.

³ See *Dallas E. Mopps*, 44 ECAB 454, 456 (1993).

⁴ Dr. Grant noted that he had performed a partial lateral meniscectomy on June 8, 1993.

The Board finds that the Office properly determined that appellant had a two percent permanent impairment of the right lower extremity for which he had received a schedule award.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.⁵ As appellant filed his appeal with the Board on January 11, 1999, the only decision before the Board is the January 13, 1998 decision of the Office hearing representative affirming the Office's August 18, 1997 decision.

Under section 8107 of the Federal Employees' Compensation Act⁶ and section 10.304 of the implementing federal regulations,⁷ 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 for all claimants the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁸

In this case, there was a conflict in opinion between Dr. Strickland, appellant's physician, who found a 32 percent impairment to the right lower extremity and Dr. Gragnani, the Office medical adviser, who found that appellant had a 2 percent ratable impairment. Due to this conflict in medical opinion, the Office properly referred appellant to Dr. McPhaul, a Board-certified orthopedic surgeon, for an independent examination and evaluation of appellant's impairment. Dr. McPhaul, following a thorough examination, determined that appellant's partial lateral meniscectomy resulted in a two percent right lower extremity impairment using the diagnosis-based estimate.⁹ He noted that appellant's date of maximum medical improvement was December 31, 1993.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹⁰ The Board finds that the weight of the medical evidence is represented by the thorough report of Dr. McPhaul who was selected to resolve the conflict of opinions, whose findings, when properly applied to the fourth edition of the A.M.A., *Guides*, establish that appellant has no more than a two percent permanent impairment of the right lower extremity for which he has received a schedule award.

⁵ See 20 C.F.R. § 501.3(d)(2).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 20 C.F.R. § 10.304.

⁸ *James A. England*, 47 ECAB 115 (1995).

⁹ A.M.A., *Guides*, Table 64.

¹⁰ *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

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

Dated, Washington, D.C.
July 5, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member