

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 99-1477; Submitted on the Record;
Issued July 19, 2000*

DECISION and ORDER

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

The issue is whether appellant has more than an 11 percent permanent impairment for his left lower extremity, for which he received a schedule award.

Appellant filed a traumatic injury claim on May 3, 1994 alleging to have suffered a left ankle sprain and right knee bruise on May 2, 1994. The Office of Workers' Compensation Programs accepted his claim for right knee contusion and left ankle sprain.¹ Appellant stopped work on May 4, 1994, returned to light-duty intermittently and returned to full duty on September 28, 1994.

On December 20, 1995 appellant filed a CA-2a claim alleging that he sustained a recurrence of disability on November 2, 1995. After development of the evidence, the Office determined that appellant had sustained a new injury to his right knee and not a recurrence of his May 2, 1994 left knee injury, and converted appellant's recurrence claim into a new and separate traumatic injury claim under a new claim number. The Office accepted the new claim for right collateral lateral ligament sprain on October 4, 1996. On January 30, 1998 the Office determined that, because appellant had sustained two injuries to his right knee on May 2, 1994 and November 2, 1995, which the Office had accepted, it would double the cases into the oldest open claim of May 3, 1994.

Appellant later filed a claim for a schedule award. On October 16, 1995 the Office requested a medical opinion pursuant to the American Medical Association, *Guides to the*

¹ The Board notes that the Office originally accepted the May 3, 1994 claim for contusion left knee and left ankle sprain. The medical evidence of record suggests that appellant sustained a contusion to his right knee on May 2, 1994. The Office made reference to a left knee contusion in letters to appellant and a statement of accepted facts dated December 20, 1995, but made a correction in a subsequent statement on January 30, 1998 finding that appellant suffered from contusion of the right knee.

Evaluation of Permanent Impairment, (A.M.A., *Guides*) Fourth Edition,² from Dr. Hampton Jackson, a Board-certified orthopedist, to obtain an impairment rating for appellant's work-related ankle injury sustained on May 2, 1994. Dr. Eric Dawson, appellant's other treating physician, replied in a November 22, 1995 letter, that appellant had sustained a 27 percent disability of the body as a whole. On March 21, 1996 the Office informed appellant that the Federal Employees' Compensation Act does not provide for payment of a schedule award on the whole person or body, therefore, it requested an additional impairment rating for the left lower extremity based on the A.M.A., *Guides* and an explanation as to how the accepted conditions resulted in permanent impairment.

On January 30, 1998 the Office referred appellant to Dr. Michael Joly, a Board-certified orthopedist, for a second opinion evaluation and determination of appellant's permanent functional loss of use of both lower extremities as a result of his May 2, 1994 injury. Dr. Joly conducted an independent medical evaluation of appellant on March 10, 1998. He examined appellant and reported his medical history, condition at the time of the examination and the facts and circumstances surrounding appellant's job-related injury on May 2, 1994. Dr. Joly diagnosed appellant with chronic lateral left ankle sprain and opined that the date of maximum medical improvement was May 5, 1995, approximately one year after the initial incident. He noted that according to the A.M.A., *Guides*, he assigned appellant a three-percent whole person impairment due to the restricted dorsiflexion.

On April 28, 1998 the Office informed Dr. Joly that although he reported that appellant had a three-percent whole person impairment, there are no provisions in the Act for such impairment. The Office indicated that the accepted injuries of record are limited to the right knee and the left ankle and that it needed an impairment rating for appellant's left ankle.

In an updated report dated August 11, 1998, Dr. Joly outlined appellant's impairment measurements taken with a goniometer during his March 10, 1998 examination and a 10 percent impairment rating for his left ankle. He reported that appellant's left ankle range of motion included 10 degree dorsiflexion, 40 degree plantar flexion, 20 degree inversion and 10 degree eversion. Dr. Joly reported further that his 10 percent impairment rating of appellant's left ankle was based on Table 42 on page 78 of the A.M.A., *Guides*.

In an August 31, 1998 report, an Office medical adviser reviewed Dr. Joly's findings and determined that appellant sustained an 11 percent permanent impairment to the left lower extremity with a date of maximum medical improvement of May 3, 1995. The Office medical adviser found that Dr. Joly's reported dorsiflexion of appellant's left ankle of 10 degrees converted to 7 percent permanent impairment and his reported plantar flexion of 40 degrees to 0 percent permanent impairment according to Table 42 on page 78 of the A.M.A., *Guides*. He further found that Dr. Joly's reported 20 degree inversion converted to 2 percent permanent impairment and his 10 degree eversion to 2 percent permanent impairment, according to Table 43 on page 78 of the A.M.A., *Guides*. The Office medical adviser concluded that based upon Dr. Joly's report, there was no evidence of a permanent impairment to either of appellant's knees.

² A.M.A., *Guides* (4th ed. rev., 1995).

By an award of compensation dated September 29, 1998, the Office granted appellant a schedule award for an 11 percent loss of use of his left leg for 31.68 weeks at the weekly rate of \$644.30.³

On appeal, appellant argues that his schedule award is inadequate for compensation of his ankle and right knee injury. He contends that the Office did not consider his right knee in its January 5, 1999 decision.

The Board has duly reviewed the case record and finds that this case is not in posture for a decision.

The schedule award provisions of the Act 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.⁴ However, the Act does not specify the manner in which the percentage of loss of a member shall be determined. The Board has held, however, that for consistent results and to ensure equal justice under the law to 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 Office has adopted the A.M.A., *Guides* for determining the extent of permanent impairments and the Board has concurred with the adoption of the A.M.A., *Guides*.⁵ Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's physician. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁶

In the instant case, appellant submitted medical reports from his treating physicians, Drs. Jackson and Dawson, who provided detailed descriptions of appellant's injury to his right knee and left ankle on May 2, 1994 and again to his right knee on November 2, 1995. The Office requested an impairment rating of appellant's ankle injury from Dr. Dawson, to which he responded in a November 22, 1995 report. He noted that based upon an examination of appellant's ankle and right knee injuries, he had a disability of 27 percent of the whole body. The Office found, however, that because there are no provisions for a whole person impairment in the Act, his report could not be relied upon to support a schedule award.

The Office medical adviser sought a second opinion evaluation from Dr. Joly of both lower extremities. In a March 10, 1998 report, he referred to appellant's right knee contusion sustained in the May 2, 1994 work incident and his right lateral collateral ligament sprain sustained in the accepted work incident on November 2, 1995. Dr. Joly reported that appellant's

³ The Board notes that on November 6, 1998, the Office cancelled the schedule award check issued to appellant after it found that appellant's address had changed. The Office issued a second and final decision awarding appellant compensation dated January 5, 1999.

⁴ 5 U.S.C. § 8107.

⁵ *Donald Mueller*, 32 ECAB 323 (1980); *Anne E. Hughes*, 27 ECAB 106 (1975); *Theodore P. Richardson*, 25 ECAB 113 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

⁶ *Alvin C. Lewis*, 36 ECAB 595 (1985).

chief complaint was of the lateral aspect of his left ankle and only conducted an examination of that area. He concluded by finding a three-percent whole person impairment. The Office informed Dr. Joly that the Act makes no provisions for a whole body impairment and requested that he reevaluate appellant's impairment, specifically the impairment of appellant's left ankle.

Dr. Joly updated his report on August 11, 1998, in which he assessed the impairment of appellant's left ankle and noted his findings on previous examination, which included an evaluation of appellant's range of motion of 10 degree dorsiflexion, 40 degree plantar flexion, 20 degree inversion and 10 degree eversion. Dr. Joly opined that appellant had a 10 percent left lower extremity impairment due to his work injury and indicated that he utilized Table 42 on page 78 of the A.M.A., *Guides*.

The January 5, 1999 schedule award was based on the August 31, 1998 report of the Office medical adviser, who reviewed Dr. Joly's March 10 and August 11, 1998 findings, and assessed an impairment rating of 11 percent for the left ankle using Table 42 and 43 on page 78 of the A.M.A., *Guides*. His impairment rating of 11 percent, however, is not supported by the impairment estimates found in Table 42 and 43 on page 78, therefore, Dr. Joly's rating cannot be relied upon to support a proper schedule award. In his August 31, 1998 report, the Office medical adviser found that Dr. Joly reported dorsiflexion of 10 degrees converted to a 7 percent permanent impairment and his plantar flexion of 40 degrees to a 0 percent permanent impairment according to Table 42 on page 78 of the A.M.A., *Guides*. He further found that Dr. Joly's reported 20 degree inversion converted to 2 percent permanent impairment and his 10 degree eversion to 2 percent permanent impairment, according to Table 43 on page 78 of the A.M.A., *Guides*. According to the estimates in Table 42 diagnosing ankle impairments, a flexion measurement of 10 degrees yields 15 percent moderate impairment, while extension to 10 degrees yields a 7 percent mild impairment rating. The Office medical adviser assessed a seven percent impairment for flexion and did not explain in his report how he arrived at this percentage. Therefore, the Board is unable to ascertain whether appellant's dorsiflexion impairment was properly evaluated.

Furthermore, the Office failed to request an impairment rating for appellant's right knee to determine whether he was eligible for a schedule award for his right knee condition. The Office requested that Dr. Joly determine appellant's permanent functional loss of use of both lower extremities, however, when it requested that he reevaluate appellant after he initially gave a rating not provided by the Act, the Office only requested an ankle impairment rating. The record has established that appellant suffered a right knee contusion and subsequently a lateral collateral ligament sprain which the Office accepted. There is no evidence of record that appellant's right knee condition had resolved. On the contrary, the record contains detailed reports showing that appellant was evaluated at least monthly by his physicians for persistent symptoms related to his accepted knee condition, particularly the ligament sprain, through August 28, 1998. In his August 31, 1998 report, the Office medical adviser indicated that based upon Dr. Joly's evaluation, there was no evidence of a permanent impairment to either of appellant's knees, however, the record clearly establishes that the Office limited Dr. Joly to an assessment of appellant's left ankle, in its request for reevaluation of appellant's impairment rating.

Because the Office miscalculated the impairment rating for appellant's left lower extremity and failed to obtain an impairment rating of appellant's right lower extremity, the Board will set aside the January 5, 1999 decision and remand the case for proper development of the medical evidence. On remand, the Office should refer appellant to a specialist for an impairment rating of appellant's left ankle and right knee related to the accepted injuries sustained on May 2, 1994 and November 2, 1995. The Office should also inform the specialist of its evidentiary requirements for determining the extent of permanent impairments. After such further development as may be necessary, the Office shall issue a *de novo* decision on appellant's entitlement to a schedule award.

The January 5, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
July 19, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member