

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY I. MAZOCK and U.S. POSTAL SERVICE,
POST OFFICE, Fort Wayne, IN

*Docket No. 99-1108; Submitted on the Record;
Issued June 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

On June 27, 1996 the Office of Workers' Compensation Programs accepted appellant's claim for left knee sprain and lumbosacral strain sustained on May 28, 1996. The Office subsequently accepted appellant's July 12, 1996 left knee arthroscopy.

On June 12, 1997 appellant filed a claim for a schedule award.¹

In a medical report dated September 1, 1998, Dr. William J. Berghoff, Board-certified in orthopedic surgery, stated that appellant had a two percent permanent impairment of the left two lower extremity due to post meniscectomy and meniscectomy.² On September 24, 1998 Dr. Berghoff stated: "The patient's permanent partial impairment rating dated September 1, 1998 is an addition to previous."

On November 3, 1998 the Office referred appellant's case record and a statement of amended accepted facts to the Office medical adviser to evaluate appellant's permanent functional loss of his left lower extremity. The statement of amended accepted facts included appellant's schedule award for a two percent permanent impairment of the left lower extremity. In a medical report dated November 5, 1998, the Office medical adviser stated that according to

¹ On August 12, 1997 appellant filed a claim for traumatic injury to his left knee sustained that day while in the performance of duty. The Office, on November 14, 1997, denied appellant's claim. On August 18, 1998 appellant filed a second claim for a schedule award. Both claims were doubled subsequently with appellant's June 12, 1997 schedule award claim under the claim number A09-41611.

² Dr. Berghoff initially stated in an April 10, 1997 report that appellant had a two percent permanent impairment of the left lower extremity due to a medial meniscus tear and partial meniscectomy.

the American Medical Association, *Guides to the Evaluation of Permanent Impairment* appellant was entitled to a two percent permanent impairment of the left lower extremity based on his partial meniscectomy.

By decision dated November 17, 1998, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that appellant was entitled to more than a two percent permanent impairment of the left lower extremity.

The Board finds that appellant failed to establish entitlement to greater than a two percent permanent impairment of the left lower extremity for which he had received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act³ and section 10.304 of the implementing federal regulations,⁴ 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.⁵

In this case, appellant's treating physician initially determined that appellant had a two percent permanent impairment of the left lower extremity due to his post partial meniscectomy. The Office medical adviser determined that appellant had a two percent permanent impairment of the left lower extremity based on his partial meniscectomy.⁶ The Board notes that Dr. Berghoff's note dated September 24, 1998, in which he stated that his September 1, 1998 rating was in addition to his earlier rating was not supported by a rationalized medical opinion with references to the A.M.A., *Guides* and thus is of diminished probative medical value. The Board finds that appellant failed to submit medical evidence that would support a greater than two percent permanent impairment for which he had received a schedule award.

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.304.

⁵ *James A. England*, 47 ECAB 115 (1995).

⁶ A.M.A., *Guides* at 85, Table 64.

The Office of Workers' Compensation Programs decision dated November 17, 1998 is affirmed.

Dated, Washington, D.C.
June 22, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member