

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS C. LOCKMAN and U.S. POSTAL SERVICE,
POST OFFICE, Woodstown, NJ

*Docket No. 98-2417; Submitted on the Record;
Issued May 5, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof to establish that he has greater than a 10 percent permanent impairment of his left lower extremity, for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's application for review on May 4, 1998.¹

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office, dated November 14, 1997, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board also finds that the Office did not abuse its discretion by denying appellant's application for review on May 4, 1998.

Following the decision dated November 14, 1997, appellant requested that the Office reconsider his case. In support of this request for reconsideration, appellant submitted a January 21, 1998 supplemental report from Dr. David Weiss, an osteopath, who had previously examined appellant in connection with his claim for a schedule award. In his supplemental report, Dr. Weiss agreed that appellant was not entitled to an additional schedule award for his second left knee partial meniscectomy and further reiterated his earlier conclusions that pursuant to Table 64, page 85, appellant was entitled to a 10 percent permanent impairment rating for a tear to his left lateral and medial meniscus, leading to a partial meniscectomy and was also entitled to a 5 percent permanent impairment rating for muscle weakness, Grade 4, pursuant to Tables 38 and 39, page 77.

¹ The Office has not yet issued a decision as to whether appellant has any permanent impairment of his right lower extremity which would entitle him to a schedule award.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of his or her claim under 5 U.S.C. § 8128(a) by written request to the Office identifying the decision and the specific issues within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.² Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.³

The Office in denying appellant's application for review properly noted that Dr. Weiss's supplemental report did not contain any new evidence or provide the necessary calculations for the muscle weakness rating which were absent from his earlier report. As Dr. Weiss's report merely reiterated his previous findings, it did not require a reopening of the case for merit review.

The decisions of the Office of Workers' Compensation Programs dated May 4, 1998 and November 14, 1997 are hereby affirmed.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2).