

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA ARTHUR and U.S. POSTAL SERVICE,
POST OFFICE, North Royalton, OH

*Docket No. 98-2463; Submitted on the Record;
Issued May 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 12 percent permanent impairment of her right leg for which she had received a schedule award.

On January 20, 1995 appellant, then a 52-year-old letter carrier, filed a claim for traumatic injury alleging that on January 17, 1995 she injured her right leg behind the knee and the upper back part of her leg while in the performance of duty.

On March 6, 1995 the Office of Workers' Compensation Programs authorized arthroscopic surgery and accepted appellant's claim for right posterior knee strain and internal derangement.

On May 20, 1996 appellant filed a claim for a schedule award.

In an undated medical report received by the Office on August 12, 1996, Dr. Konstantin Kuschnir, an orthopedic surgeon, stated that he had performed arthroscopic surgery on appellant on June 6, 1995 and rendered a diagnosis of internal derangement, right knee, a popliteal cyst and synovitis.

On August 6, 1996 the Office advised appellant that she previously had been awarded an 11 percent permanent impairment for her right leg in a different claim and that in order to determine additional entitlement her doctor would need to submit additional information in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th edition 1993).

In a medical report dated September 5, 1996, Dr. Kuschnir stated that he examined appellant that day and reported his findings. He noted appellant's range of motion of her right knee was "about 0 degrees to 120 degrees," that she had pain in the medial lateral aspect of the patellae, pain in the posterior aspect, tender at her incision and that she had muscle weakness in the quadriceps area. Dr. Kuschnir also noted a probable slight difference in the circumference of

her leg of a half an inch. He noted no change in her degenerative joint disease based on x-rays taken that day. Dr. Kuschnir estimated that appellant's date of maximum medical improvement would be reached within six months.

In a medical report dated December 3, 1996, the Office medical adviser reviewed the statement of accepted facts and Dr. Kuschnir's September 5, 1996 medical report and determined that appellant had a 12 percent permanent impairment of the right knee. He based his determination on Dr. Kuschnir's findings that appellant had some weakness in the quadriceps muscle. The Office medical adviser determined that to be 4/5 quadriceps muscle strength which equaled a 12 percent permanent impairment of the right lower extremity based on the A.M.A., *Guides*.¹

In a decision dated January 29, 1997, the Office awarded appellant an additional one percent permanent impairment to her 11 percent award for a total of 12 percent permanent impairment for her right leg.²

On February 7, 1997 appellant, through counsel, requested an oral hearing.

On June 17, 1997 a hearing was held and on July 21, 1997 the hearing representative issued a decision, finalized that day, which affirmed the Office's January 29, 1997 decision awarding appellant a 1 percent increase in her schedule award to 12 percent for her right leg.

On June 8, 1998 appellant, through counsel, requested reconsideration. In support of her application for review, he submitted an October 7, 1997 medical report from Dr. Kuschnir. In that report he stated that appellant had mild to severe pain in the right knee, that her range of motion on flexion was 140 degrees, extension was 0 degrees bilaterally, that she had left-sided atrophy caused by L4-5 disc problem and that she had graded 6 out of 6 for quadriceps and hamstring strength. Dr. Kuschnir further noted no ligamentous instability or varus deformity. He indicated that appellant had evidence of post-traumatic irregular arthritic changes that affect cartilage. Dr. Kuschnir further noted that appellant had reached maximum medical improvement. In a medical report dated March 31, 1998, he stated that appellant was symptomatic with pain in the anterior aspect of her knee, that she may have had a neuroma, that her range of motion was normal and that her Drawer's sign was negative.

On June 23, 1998 the Office referred the statement of accepted facts and appellant's medical record to the Office medical adviser. In a medical report dated July 8, 1998, the Office medical adviser stated that, based on Dr. Kuschnir's evaluation and the A.M.A., *Guides* appellant had a 2 percent permanent impairment of the right knee.

In a July 28, 1998 merit decision, the Office denied modification of its July 21, 1997 decision.

¹ A.M.A., *Guides* 77, Table 39.

² The record does not include a copy of appellant's initial 11 percent schedule award.

Under 5 U.S.C. § 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 support of her request for reconsideration, appellant submitted an October 9, 1997 medical report from Dr. Kuschnir, her treating physician and an orthopedic surgeon, who stated that appellant had mild to severe pain in the knee and that her range of motion evaluation was normal. The Board notes that he did not provide an impairment rating in his report. The Office medical adviser relied on Dr. Kuschnir's findings and the A.M.A., *Guides* to determine that appellant had a 2 percent permanent impairment of the right knee. He determined that appellant's extension to 0 degrees and flexion to 140 degrees was equal to a 0 percent impairment,⁶ that her knee was stable and that her quadriceps power was normal. The Office medical adviser also noted that appellant's medial partial meniscectomy was equal to a 2 percent impairment⁷ and that her maximum medical improvement was reached on October 7, 1997. The Board concludes that the Office medical adviser properly applied the A.M.A., *Guides* in determining that appellant had a 2 percent permanent impairment of the right leg for which she had received a 12 percent schedule award and that she had failed to provide probative, supportive medical evidence that she has greater than the 12 percent impairment already awarded.

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* 78, Table 41.

⁷ *Id.*, 85, Table 64.

The decision of the Office of Workers' Compensation Programs dated July 21, 1998 is affirmed.⁸

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁸ The Board notes that subsequent to the Office's July 28, 1998 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).