

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAM NOCERA and U.S. POSTAL SERVICE,
POST OFFICE, Niles, OH

*Docket No. 00-55; Submitted on the Record;
Issued November 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a 52 percent permanent impairment to his right leg.

On April 22, 1991 appellant filed an occupational disease claim alleging that he aggravated his right knee condition as a result of job duties as a letter carrier. The Office of Workers' Compensation Programs accepted the claim for a permanent aggravation of degenerative osteoarthritis in the right knee. By decision dated September 13, 1994, the Office issued a schedule award for a 52 percent permanent impairment to the right leg. In a decision dated December 16, 1998, the Office determined that appellant had not established more than a 52 percent permanent impairment to the right leg. Following a review of the written record, an Office hearing representative affirmed the prior decisions in a decision dated July 28, 1999.

The Board has reviewed the record and finds that appellant has not established more than a 52 percent permanent impairment to the right leg.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

In this case, appellant did not submit any probative medical evidence establishing that he was entitled to an additional schedule award above the 52 percent permanent impairment

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

² A. George Lampo, 45 ECAB 441 (1994).

previously issued on September 13, 1994. The award was based on the Office medical adviser's review of the March 25, 1994 findings of an attending physician, Dr. James D. Brodell, an orthopedic surgeon. On reconsideration Dr. Brodell, indicated in a December 17, 1996 report that the 52 percent figure was "generous," and did not provide evidence supporting a greater impairment. In a letter dated April 10, 1998, the Office requested that Dr. Brodell provide a complete report with respect to appellant's permanent impairment under the A.M.A., *Guides*, but Dr. Brodell's continuing reports did not address the issue. In a report dated May 18, 1998, for example, Dr. Brodell noted that appellant continued to report joint pain with swelling. He did not provide a detailed description of the impairment or an opinion as to the degree of permanent impairment under the A.M.A., *Guides*. In a report dated July 21, 1998, Dr. N. Rehmatullah, an orthopedic surgeon, provided results on examination and noted limited range of motion in the knee and arthritic changes. Dr. Rehmatullah did not provide an opinion as to the degree of permanent impairment. The medical evidence was referred to an Office medical adviser, and in a memorandum dated October 12, 1998, the medical adviser opined that appellant had a 20 percent leg impairment due to loss of motion.

The Board finds that the record does not contain any probative medical evidence supporting an additional permanent impairment above the 52 percent previously awarded. Appellant did not submit probative medical evidence containing a detailed description of the impairment and a reasoned opinion as to the degree of permanent impairment under the A.M.A., *Guides*. Accordingly, the Board finds that the Office properly denied an additional schedule award in this case.

The decisions of the Office of Workers' Compensation Programs dated July 28, 1999 and December 16, 1998 are hereby affirmed.

Dated, Washington, DC
November 17, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member