U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TONY DIAZ and U.S. POSTAL SERVICE,
SEMINOLE HEIGHTS POST OFFICE, Tampa, FL

Docket No. 00-1797; Submitted on the Record;
Issued April 13, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to more than a seven percent permanent impairment for the loss of use of his right lower extremity, for which he has already received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant is not entitled to more than a seven percent permanent impairment for the loss of use of his right lower extremity.

On November 15, 1994 appellant, then a 36-year-old city letter carrier, filed a traumatic injury claim, alleging that, on November 14, 1994, he felt something pop inside his right knee, then pain and a burning sensation inside his knee while getting into his mail delivery vehicle.[1]

The Office accepted appellant's claim for right chrondromala patella and partial anterior cruciate ligament tear.

On April 13, 1999 appellant filed a claim (Form CA-7) for a schedule award.

By decision dated January 31, 2000, the Office granted appellant a schedule award for a seven percent permanent impairment for the loss of use of his right lower extremity.

[1] Subsequently, appellant filed a claim on November 6, 1997, alleging that on November 5, 1997 he injured his right knee while in the performance of duty. By letter dated December 4, 1997, the Office of Workers' Compensation Programs accepted appellant's claim for medial meniscus tear of the right knee and arthroscopy of the right knee. On April 7, 1998 appellant filed another claim alleging that on April 6, 1998 he sprained or hyperextended his right knee and sustained a sore right upper leg/hip while in the performance of duty. By letter dated June 22, 1998, the Office accepted appellant's claim for bursitis of the right hip and knee. On September 8, 1998 appellant filed a claim for a schedule award. The record does not contain a decision regarding this claim. The Office consolidated appellant's claims, assigned numbers 06-690192 and 07-700655, into this number 06-0613319.

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation,[3] 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. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[4] 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 under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[5]

In a July 16, 1998 duty status report, appellant's treating physician, Dr. Edward N. Feldman, an orthopedic surgeon, noted appellant's April 6, 1998 employment injury and a diagnosis of acute traumatic synovitis of the right knee.

On January 26, 1999 an Office medical adviser reviewed Dr. Feldman's report and determined that appellant had a two percent permanent impairment of the right lower extremity until additional measurements were obtained from Dr. Feldman to calculate a rating for appellant's degenerative arthritis in the right knee, based on Table 62 of the A.M.A., *Guides*.

Subsequently, Dr. Feldman submitted a March 24, 1999 report, which provided a diagnosis of chronic synovitis and effusion of the right knee, trochanteric bursitis on the right, status post arthroscopic surgery on the right knee two times, early degenerative osteoarthritis of the right knee and a vertical tear of the medial surface of the medial meniscus. Dr. Feldman opined that appellant had a permanent injury to the right knee as a result of on-the-job injuries. He further opined that appellant had a torn meniscus in the right knee that would eventually require surgery to correct. Dr. Feldman stated:

> "[Appellant] also has early degenerative osteoarthritis which is demonstrated with joint space narrowing as determined in Chapter III, page 83, Table 62 of the A.M.A., *Guides*. [Appellant] has an interval of two millimeters in the medial and lateral compartments, which would qualify for 20 percent impairment of the right lower extremity. [Appellant's] patellar-femoral interval is also reduced to 4 millimeters, which would qualify [appellant] for a further impairment of 10 percent of the right lower extremity. There is also a torn meniscus, persistent pain and frequent swelling which would qualify for another 15 percent of the right lower extremity. According to the [A.M.A.,] *Guides* in the 4th edition of the

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.404.

[4] 5 U.S.C. § 8107(c)(19).

[5] *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

> A.M.A., *Guides*, [appellant] has sustained a permanent impairment of 45 percent of the right lower extremity as a result of injuries sustained on the job. Without surgery, he is at the point of maximum medical improvement and has a poor prognosis."

On April 13, 1999 an Office medical adviser reviewed Dr. Feldman's medical report and determined that an interval of two millimeters narrowing of cartilage of the knee constituted a 20 percent impairment of the right lower extremity based on Table 62, page 3/83. The Office medical adviser determined that a patellofemoral interval of four millimeters constituted a zero percent impairment based on the same table, and that a partial medial meniscectomy on December 10, 1998 constituted a two percent impairment of the right lower extremity, based on Table 64, page 3/85. The Office medical adviser added 20 percent and 2 percent to calculate a 22 percent permanent impairment of the right lower extremity. The Office medical adviser concluded that appellant reached maximum medical improvement on March 24, 1999, the date of Dr. Feldman's report.

Pursuant to section 8123(a) of the Act, appellant was referred to Dr. Edwin M. Melendez, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in the medical evidence concerning the degree of impairment. In a report dated June 24, 1999, Dr. Melendez provided a history of appellant's November 14, 1994 employment injury, subsequent employment injuries, medical treatment and his findings on physical and objective examination. Dr. Melendez opined that appellant suffered from right knee pain post partial medial meniscectomy and right knee recurrent patellofemoral joint pain secondary to chondromalacia patella. He also opined that there was no evidence of ligamentous laxity of the medial, lateral or anterior or posterior cruciate ligaments, and no evidence of meniscal damage.

Dr. Melendez determined that appellant had a two percent impairment rating secondary to partial medial meniscectomy in accordance with Table 64 of the A.M.A., *Guides*. Dr. Melendez further determined that appellant had a five percent impairment rating of the lower extremity secondary to patellofemoral pain, crepitation, but without joint space narrowing on radiographic examination, based on Table 62. He then calculated a total of seven percent permanent impairment of the right lower extremity based on the A.M.A., *Guides*.

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[6] In this case, the report of Dr. Melendez, obtained to resolve a conflict of medical opinion, was based on the proper use of the tables in the A.M.A., *Guides*. The report of Dr. Melendez constitutes the weight of the medical evidence and is sufficient to establish that appellant is not entitled to more than a seven percent permanent impairment for the loss of use of his right lower extremity, for which he has already received a schedule award.

[6] *James P. Roberts*, 31 ECAB 1010 (1980).

The January 31, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 13, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member