

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM L. ALBRACHT and DEPARTMENT OF THE TREASURY,
U.S. SECRET SERVICE, Washington, DC

*Docket No. 01-409; Submitted on the Record;
Issued August 28, 2001*

DECISION and ORDER

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

The issue is whether appellant is entitled to compensation for a schedule award at the augmented rate.

The Office of Workers' Compensation Programs accepted that on September 1, 1999 appellant, then the 51-year-old assistant to the special agent in charge of the Washington, D.C. field office, sustained a right knee sprain when a fleeing suspect rammed appellant's vehicle. Arthroscopic surgery was authorized, and appellant underwent a partial medial and lateral meniscectomy, chondroplasty of the patella and a section of small plica.

Postoperatively, in a report dated November 4, 1999, Dr. H. Edward Lane, III, a Board-certified orthopedic surgeon, noted that appellant would have some residual dysfunction, but that hopefully he would be able to function in his job.

By report dated December 2, 1999, Dr. Lane noted that appellant was much improved and was able to return to full duty as long as he was careful about running. Dr. Lane opined that based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a 15 percent permanent impairment of the right lower extremity based upon the osteochondral lesion and meniscectomy. He reiterated this impairment rating in a February 2, 2000 report.

The case was referred to an Office medical adviser who, after reviewing the medical reports of record, calculated that, in accordance with the A.M.A., *Guides*, appellant had a 19 percent permanent impairment of his right lower extremity. The Office medical adviser arrived at this conclusion by allowing a 10 percent impairment for the partial medial and lateral meniscectomy, 7 percent impairment for the osteochondral defect and 2 percent for pain.¹

¹ The A.M.A., *Guides*' appropriate rating page references and table/figure cites were provided.

On July 26, 2000 appellant completed a EN-1032 form provided to him by the Office on July 21, 2000. Under Part C -- the section asking questions about dependents, appellant answered the question: "Are you married?" with the answer "Yes." He further answered the question as to whether his spouse resided with him "Yes."

On August 21, 2000 the Office granted appellant a schedule award for a 19 percent permanent impairment of his right lower extremity for the period February 2, 2000 to February 19, 2001 for a total of 54.72 weeks of compensation. The Office, however, granted appellant compensation for a schedule award at the two-thirds rate instead of the three-fourths rate.

On appeal appellant contends that he was entitled to compensation for his schedule award at the augmented rate, and in support he submits another copy of his marriage license. As this evidence was not before the Office at the time of its most recent merit decision, it cannot now be considered by the Board.²

The Board finds that appellant is entitled to compensation for his schedule award at the augmented rate.

In accordance with 5 U.S.C. § 8110(a)(1)(A), entitled "Augmented compensation for dependents," a dependent means a wife, if she is a member of the same household as the employee. Section 8110(b) goes on to explain that a disabled employee with one or more dependents is entitled to have his basic compensation for disability augmented -- 8110(b)(1) "at the rate of 8 1/3 percent of his monthly pay if that compensation is payable under section 8105 or 8107(a) of this title."³ As appellant's compensation entitlement arose under 5 U.S.C. § 8107, he is entitled to augmented compensation, as noted above, at a rate not to exceed 75 percent of his monthly pay.⁴

As appellant clearly indicated on his July 26, 2000 Form EN-1032, he was married and cohabitated with his wife, the Office had sufficient information to determine that he was entitled to compensation for his schedule award at the augmented rate.

² 20 C.F.R. § 501.2(c).

³ Basic compensation is defined under §§ 8105, 8106 and 8107 as being 66 2/3 percent of an employee's monthly pay.

⁴ See 20 C.F.R. § 10.404(b) which explains that compensation for schedule awards is payable at 75 percent of the pay when the employee has at least one dependent.

Consequently, the decision of the Office of Workers' Compensation Programs dated August 21, 2000 is hereby set aside, and the case is remanded to the Office for reissuance of appellant's schedule award at the appropriate augmented rate.

Dated, Washington, DC
August 28, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member