U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL M. HARKINS and U.S. POSTAL SERVICE,
TRANSPORTATION NETWORKS, Washington, DC

Docket No. 00-2348; Submitted on the Record;
Issued June 5, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent permanent impairment of the right lower extremity, for which he received a schedule award.

On April 6, 1998 appellant, a 44-year-old tractor-trailer operator, sustained an injury to his right knee while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for right knee sprain. The Office later accepted that appellant sustained a torn right medial meniscus, and the Office authorized arthroscopic surgery. Dr. Edward C. Rabbitt, a Board-certified orthopedic surgeon, performed the authorized surgical procedure on April 29, 1999.

By decision dated June 30, 2000, the Office granted appellant a schedule award for a two percent permanent impairment of his right lower extremity. The award covered a period of 5.76 weeks.

The Board finds that appellant has failed to establish that he has more than a two percent permanent impairment of the left lower extremity.

Section 8107 of the Federal Employees' Compensation Act[1] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the American Medical Association, *Guides*

[1] 5 U.S.C. § 8107.

to the Evaluation of Permanent Impairment (4th ed. 1993) as an appropriate standard for evaluating schedule losses, and the Board has concurred in such adoption.[2]

Appellant alleges that he has a 12 percent permanent impairment of his right lower extremity based on the May 4, 2000 report of his treating physician, Dr. Rabbitt. The June 30, 2000 schedule award for permanent impairment of appellant's right lower extremity is based on a two percent impairment rating for appellant's April 29, 1999 partial medial meniscectomy. This two percent rating properly corresponds with the diagnosis-based estimates provided at Table 64 at page 85 of the A.M.A., *Guides* (4th ed. 1993). Although Dr. Rabbitt calculated an additional 10 percent impairment due to "subjective complaints of atrophy, weakness and continued pain," the diagnosis-based estimates provided at Table 64 of the A.M.A., *Guides* already account for pain, expected muscle weakness or atrophy.[3] Furthermore, while Dr. Rabbitt identified Table 64 of the A.M.A., *Guides* as the basis for his finding of a 2 percent permanent impairment, he did not specifically reference the A.M.A., *Guides* in finding that appellant was entitled to an additional 10 percent impairment. As such, Dr. Rabbitt's additional impairment rating is of diminished probative value in determining the extent of appellant's permanent impairment.[4] Consequently, appellant has failed to provide any probative medical evidence that he has greater than a two percent permanent impairment of the right lower extremity.[5]

[2] *James J. Hjort*, 45 ECAB 595 (1994).

[3] The Office's procedural manual clarifies that Tables 37-39 and 68 (impairments from leg muscle atrophy, lower extremity muscle weakness and nerve deficits) are incompatible with Table 64, diagnosis-based impairment estimates. Federal (FECA) Procedural Manual, Part 3 -- Medical, *Schedule Award*, Chapter 3.700 (October 1995).

[4] *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

[5] The Act provides that, for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks of compensation. 5 U.S.C. § 8107(c)(2). In the instant case, appellant does not have a total, or 100 percent loss of use of his right leg, but rather a 2 percent loss. As such, appellant is entitled to 2 percent of the 288 weeks of compensation, which is 5.76 weeks.

The June 30, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 5, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member