

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARK S. MEDCALF and U.S. POSTAL SERVICE,  
POST OFFICE, Florissant, MO

*Docket No. 00-1094; Submitted on the Record;  
Issued March 27, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

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

On May 9, 1997 appellant, then a 36-year-old letter carrier, injured his right knee when he tripped on a tree stump protruding from the ground. The Office of Workers' Compensation Programs accepted appellant's claim for torn right medial meniscus on June 6, 1997. On July 2, 1998 appellant tripped while walking on an elevated driveway. Appellant's claim was accepted by the Office for right knee contusion and surgery on September 23, 1998.

By letters dated November 8, 1999, the Office referred appellant to Dr. John A. Gragnani, Board-certified in physical medicine and rehabilitation, to evaluate the extent of permanent impairment based on his right lower extremity due to the May 9, 1997 and July 2, 1998 employment injuries, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> edition) the A.M.A., *Guides*.<sup>1</sup>

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<sup>1</sup> The record contains no documentation indicating that appellant filed a claim for a schedule award. The Office's letter to Dr. Gragnani states that "[Appellant] may be eligible for a schedule award for any residuals of the accepted condition described in the attached Statement of Accepted Facts."

In a report dated December 3, 1999, Dr. Gragnani determined that appellant had a nine percent impairment of the right lower extremity. He found that appellant's range of motion, as recorded by a goniometer, was actively limited by appellant to 100 degrees of flexion, which is 44 degrees short of full extension and 3 degrees valgus. Dr. Gragnani further found that appellant's manual muscle testing revealed poor voluntary effort on knee extension as well as straight leg raising and flexion on the right, compared with the left. He noted that appellant underwent a debridement and arthroscopy with anterior cruciate ligament reconstruction and partial meniscectomy. Dr. Gragnani stated:

“Because of the difficulty in getting some accurate measurements for [appellant], I elected to go to [T]able 64, page 85, of the [A.M.A., *Guides*]. Utilizing this table, I used partial meniscectomy of the medial cartilage for two percent of the lower extremity rating and a cruciate ligament mild laxity, giving a seven percent rating for the right lower extremity and combined these two ratings, yielding a nine percent rating for the right lower extremity due to the meniscal resection and cruciate ligament laxity. [I] elected to use this table because of difficulty in obtaining adequate measurements that were reliable during examination. Therefore, the range of motion sections and [T]ables 20 and 21, page 151, were not given any credence in this case. Only [T]able 64, page 85, of the [A.M.A.], *Guides* was used for the purposes of rating. It was felt by this examiner to be the most objective means of obtaining an adequate rating for [appellant].”

In a memorandum dated December 14, 1999, the Office medical adviser found that appellant had a nine percent permanent impairment based on loss of use of his right lower extremity. Relying on Dr. Gragnani's findings and conclusions, the Office medical adviser stated:

“[Appellant's] examination findings are nonphysiologic and he made sub-maximal effort to cooperate with muscle strength assessment and [range of motion testing]. If he truly lacked 44 degrees of full extension, he would not be able to ambulate. The self-restricted [range of motion] findings are as implied by Dr. Gragnani's opinion.

“Dr. Gragnani in this circumstance pointed out that all this claimant's spurious abnormal findings and history could be set aside for scheduled award purposes by using Table 64, [page 85] -- ‘A Diagnosis Based Estimate,’ to offer ratings for the partial meniscectomy and the anterior cruciate ligament reconstruction. This is correct.

“The claimant using this method of rating, as indicated by Dr. Gragnani, received a nine percent [right] lower extremity rating.”

On December 27, 1999 the Office granted appellant a schedule award for a nine percent permanent impairment of the right lower extremity, running from July 1 to December 30, 1999, for a total of 25.92 weeks of compensation.

The Board finds that appellant has no more than a nine percent permanent impairment for loss of use of the right lower extremity, for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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 loss of use.<sup>4</sup> However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (4<sup>th</sup> edition) have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

In this case, the Office medical adviser determined the precise impairment rating by taking Dr. Gragnani's calculations based on Table 64, page 85, of the A.M.A., *Guides*. Dr. Gragnani explained that he relied on this table due to the difficulty in obtaining accurate measurements from appellant, who he believed was not exerting maximum effort in extension and range of motion tests. He combined the ratings obtained from appellant's partial meniscectomy of the medial cartilage and his cruciate ligament mild laxity, which amounted to a nine percent rating for the right lower extremity. The Office medical adviser concurred with Dr. Gragnani's determination.

Appellant argues that Dr. Mark D. Miller, who operated on his right knee, found a 20 percent impairment based on lateral and cruciate ligament laxity. However, Dr. Miller failed to provide specific findings or use the applicable tables in the A.M.A., *Guides*, in determining this assessment. Inasmuch as use of the A.M.A., *Guides* is required in rating impairment under the Act, Dr. Miller's assessment has no probative value.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a nine percent permanent impairment for loss of use of his right lower extremity, for which he has received a schedule award. Appellant has failed to provide probative, supportable medical evidence that he has more than the nine percent impairment already awarded.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> 5 U.S.C. § 8107(19).

<sup>5</sup> *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

The decision of the Office of Workers' Compensation Programs dated December 27, 1999 is hereby affirmed.

Dated, Washington, DC  
March 27, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member