

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. MILLIKIN and U.S. POSTAL SERVICE,
SOUTHERN HILLS POST OFFICE, Abilene, TX

*Docket No. 00-2079; Submitted on the Record;
Issued May 25, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

Appellant, a 59-year-old letter carrier, filed a notice of traumatic injury on March 21, 1996 alleging on March 20, 1996 he injured his right knee in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for torn medial meniscus right knee. Appellant underwent arthroscopy on April 26, 1996.

Appellant requested a schedule award on August 24, 1998. By decision dated July 27, 1999, the Office granted appellant a schedule award for a two percent permanent impairment of his right lower extremity. Appellant requested an oral hearing. By decision dated May 3, 2000, the hearing representative affirmed the Office's July 27, 1999 decision.

The Board finds this case not in posture for decision due to an unresolved conflict of medical opinion evidence.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. Section 10.404 provides that the Office evaluates the degree of permanent impairment to scheduled members, organs and functions as defined in 5 U.S.C. § 8107 according to the standards set forth in the edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as specified by the Office.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (4th ed. 1993).

In this case, appellant's attending physician, Dr. L. Shannon Holloway, a Board-certified orthopedic surgeon, completed a report on August 10, 1998 and applied the third edition of the A.M.A., *Guides* to his findings. Dr. Holloway concluded that appellant had a 10 percent impairment due to the tear in his meniscus, that appellant had a 10 percent impairment of the femoral nerve for each loss of strength and loss of sensation. He concluded that appellant had a 14 percent impairment of the right lower extremity.

The Office advised Dr. Holloway that he should evaluate appellant's permanent impairment in accordance with the fourth edition of the A.M.A., *Guides* and he failed to respond. The Office referred appellant for a second opinion evaluation with Dr. Farooq Selod, a Board-certified orthopedic surgeon.

In a report dated May 26, 1999, Dr. Selod listed his findings on physical examination. He stated that appellant had tenderness over the medial joint line with effusion, positive McMurray test and squat test. He reported that appellant had no sensory loss and no loss of strength. Dr. Selod measured appellant's range of motion with a goniometer and found flexion of 134, 132 and 135 degrees.⁴ Appellant's extension was consistently zero with pain on motion.⁵ Dr. Selod took and examined x-rays finding that appellant had 5 to 10 millimeters of joint space in his knee.⁶ He concluded that appellant had impairment due to his partial meniscectomy.⁷

The Office medical adviser reviewed the record on July 15, 1999 and concluded that appellant had two percent permanent impairment due to a partial medial meniscectomy.

Following the Office's decision, appellant submitted additional evidence. In a report dated January 27, 2000, Dr. Holloway reviewed the findings and conclusions of the physical therapist who prepared an impairment rating on December 11, 1998. He noted that she found flexion contracture in appellant's right knee of 17 to 18 degrees and stated that in accordance with the fourth edition of the A.M.A., *Guides*, appellant had moderate impairment of 10 to 19 degrees for an additional 20 percent impairment of his right lower extremity.

The Board finds that there is a conflict of medical opinion evidence between appellant's attending physician, Dr. Holloway, who found that appellant demonstrated loss of range of motion, and the Office second opinion physician, Dr. Selod, who found that appellant had no loss of range of motion.

⁴ A.M.A., *Guides*, 38, Table 41. The A.M.A., *Guides* does not provide for an impairment if flexion is greater than 110 degrees.

⁵ *Id.* The A.M.A., *Guides* does not provide for an impairment if flexion contracture is less than five degrees.

⁶ The A.M.A., *Guides* provides for impairment due to arthritis only if there is less than three millimeters of joint space as demonstrated on x-ray. A.M.A., *Guides*, 82, Table 62.

⁷ The A.M.A., *Guides* provides for two percent impairment to the lower extremity for a partial medial meniscectomy. A.M.A., *Guides*, 85, Table 64.

Section 8123(a) of the Act,⁸ provides, “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” On remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician to determine the extent of his permanent impairment due to his March 20, 1996 employment injury. After this and such further development as the Office deems necessary, the Office should issue an appropriate decision.

The May 3, 2000 and July 27, 1999 decisions of the Office of Workers’ Compensation Programs are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, DC
May 25, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁸ 5 U.S.C. §§ 8101-8193, 8123(a).