

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET D. JOSLYN and U.S. POSTAL SERVICE,
MAIN POST OFFICE, West Chester, PA

*Docket No. 01-337; Submitted on the Record;
Issued October 1, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant had more than a two percent permanent impairment of the left leg.

On November 3, 1993 appellant, then a 53-year-old distribution clerk, was pulling mail down when she tripped over a tray of mail on the floor and felt a stabbing pain in her kneecap. She stopped work the next day but returned to limited-duty work on November 11, 1993. She stopped working again on December 14, 1994 and underwent surgery that day for a partial meniscectomy due to a tear of the posterior horn of the medial meniscus. She returned to work, four hours a day, on March 7, 1994. She returned to full duty on May 2, 1994. She stopped working again on April 13, 1994 and underwent additional surgery for removal of a plica and synovium in the left knee. She returned to work, four hours a day, on May 30, 1995 and full duty on June 12, 1995. The Office of Workers' Compensation Programs accepted appellant's claim and paid appropriate compensation for the periods she did not work.

In a December 27, 1999 decision, the Office issued a schedule award for a two percent permanent impairment of the left leg. Appellant requested a hearing before an Office hearing representative which was conducted on May 5, 2000. In a July 25, 2000 decision, the Office hearing representative affirmed the Office's December 27, 1999 decision.

The Board finds that appellant has no more than a two percent permanent impairment of the left leg.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule.

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ has been adopted by the Office a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

The Office referred appellant to Dr. Steven Valentino, an osteopath, for an examination and opinion on the extent of her permanent impairment. In an October 26, 1999 report, Dr. Valentino stated that appellant had a full range of motion of both knees, ranging from 0 to 150 degrees. He indicated that the knees revealed normal alignment with no evidence of internal or external malrotation. He found no evidence of synovitis, effusion, crepitus or atrophy. Tests for instability of the knees were negative. He reported that evaluation of the femoral condyles, tibial plateau and menisci were normal as were the evaluations of the medial and lateral collateral ligaments. He stated that the suprapatella region and area of the plica were evaluated and found normal. Dr. Valentino concluded that appellant had recovered from her employment injury without any objective findings of residual. He indicated that, under the A.M.A., *Guides*, appellant had a one percent whole person permanent impairment which equaled a two percent permanent impairment of the left leg. He found no motor or sensory impairment and no evidence of instability or arthritis. An Office medical adviser reviewed Dr. Valentino's report and concurred in his conclusion that appellant had a two percent permanent impairment of the left leg.

Appellant submitted a January 17, 2000 report from Dr. John H. Benner, a Board-certified orthopedic surgeon, who stated that appellant had had consistent full range of motion of her knee, although with intermittent effusions. He found no significant motor or sensory impingement, with the exception of ongoing pain in the suprapatellar pouch area and around the patella. He indicated that appellant had no instability. He stated that, under the A.M.A., *Guides*, appellant had a 10 percent permanent impairment due to her partial meniscectomy and a 10 percent permanent impairment due to pain in the suprapatellar, for a total of 20 percent permanent impairment of the left leg.

The A.M.A., *Guides* gives a two percent permanent impairment for the leg for a partial meniscectomy.⁵ This is the permanent impairment estimation made by Dr. Valentino. Dr. Benner stated that appellant had a 10 percent permanent impairment due to the meniscectomy of his left knee. The A.M.A., *Guides*, however, give a 10 percent permanent impairment only for a partial meniscectomy of both the medial and lateral menisci. The record only shows that appellant had a partial meniscectomy of only the medical meniscus. Appellant, therefore, is entitled only to a two percent permanent impairment for the partial meniscectomy of the medial meniscus. Also, under the table used by Dr. Valentino and Dr. Benner, any rating of

³ (4th ed. 1993).

⁴ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁵ A.M.A., *Guides*, p. 85, Table 64.

permanent impairment under the table used by both physicians cannot be combined with a rating of impairment based on pain.⁶ Therefore, Dr. Benner's permanent impairment rating of 10 percent due to pain in the patella area cannot be used to determine appellant's permanent impairment for purposes of calculating a schedule award. Dr. Valentino's assessment of appellant's permanent impairment is more aligned with the A.M.A., *Guides* and therefore provides the more probative calculation of the extent of appellant's permanent impairment.

The decisions of the Office of Workers' Compensation Programs, dated July 25, 2000 and December 27, 1999, are hereby affirmed.

Dated, Washington, DC
October 1, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ FECA Bulletin, No. 95-17 (March 23, 1995).