

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 01-1865; Submitted on the Record;
Issued April 22, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has more than an 11 percent permanent impairment of the left leg; and (2) whether appellant has any permanent impairment of the right leg.

The case has been on appeal previously.¹ In a July 19, 2000 decision, the Board noted that appellant sustained a left ankle sprain and right knee bruise on May 2, 1994 and sustained further injury on November 5, 1995. The Office of Workers' Compensation Programs issued a schedule award for an 11 percent permanent impairment of the left leg. The Board found that the report of the Office medical adviser was not supported by the tables contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² The Board further found that the Office failed to request an impairment rating for appellant's right knee to determine whether he was entitled to a schedule award for his right knee condition. The Board, therefore, remanded the case for referral of appellant to a specialist for an impairment rating of appellant's left ankle and right knee related to appellant's accepted employment injuries.

The Office referred appellant to Dr. Richard L. Raiford, a Board-certified orthopedic surgeon, together with a statement of accepted facts and the case record, for an examination and description of physical impairment. In a March 8, 2001 report, Dr. Raiford indicated that appellant's left ankle had ranges of motion of 10 degrees dorsiflexion, 55 degrees plantar flexion, 20 degrees inversion and 10 degrees eversion. He found no significant swelling in the ankle but noted lateral and medial joint tenderness. Dr. Raiford reported that appellant's right knee had ranges of motion of 0 degrees extension and 120 degrees of flexion. He indicated that the right knee had no effusion and no atrophy of the calf or thigh muscles. Dr. Raiford noted that appellant complained of pain on palpation in the region of the lateral collateral ligament and in

¹ Docket No. 99-1477 (issued July 19, 2000).

² Fourth edition (1993).

the popliteal space. He diagnosed chronic left ankle sprain and chondromalacia of the right patella with degenerative joint disease. Dr. Raiford used the 4th ed. of the A.M.A., *Guides* to find that appellant had a 7 percent permanent impairment of the left leg due to the loss of extension, 2 percent permanent impairment for loss of eversion and 2 percent permanent impairment for loss of inversion, for a total 11 percent permanent impairment of the left leg. He stated that, under the 4th ed. of the A.M.A., *Guides*, flexion of less than 110 degrees would constitute a mild impairment. Dr. Raiford noted that appellant's knee flexed to 120 degrees. He found no flexion contracture, no varus or valgus abnormalities, no atrophy and no weakness. Dr. Raiford indicated that appellant had degenerative joint disease in the right knee shortly after the injury and, therefore, the joint disease should be considered a preexisting condition.

An Office medical adviser reviewed Dr. Raiford's report and noted that the fifth edition (5th ed.) of the A.M.A., *Guides*³ resulted in the same permanent impairment of the left leg as the 4th ed. of the A.M.A., *Guides*. He also indicated that appellant had no permanent impairment of the right leg under either the 4th or 5th ed. of the A.M.A., *Guides*.

In an April 5, 2001 decision, the Office denied appellant's claim for a greater permanent impairment of the left leg on the grounds that the 11 percent schedule award for the left leg previously awarded was correct. The Office denied appellant's claim for a greater permanent impairment of the right leg on the grounds that he had no ratable permanent impairment of the right knee.

The Board finds that appellant has no more than an 11 percent impairment of the left leg.

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁶

The Office medical adviser properly evaluated Dr. Raiford's report under the 5th ed. of the A.M.A., *Guides* as appellant's case was recalculated after February 1, 2001, the effective date of the Office's use of the 5th ed.⁷ The A.M.A., *Guides* shows that a 10 degree extension of the ankle is a mild permanent impairment, which equals a 7 percent permanent impairment of the leg. 20 degrees of inversion and 10 degrees of eversion are also identified as mild impairments

³ 5th ed., (2000).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Id.*

⁷ FECA Bulletin No. 01-5 (issued January 29, 2001).

of the leg, equaling 2 percent permanent impairment of the leg for each impaired motion or a total of 4 percent permanent impairment of the leg.⁸ This resulted in a total of 11 percent impairment based on loss of range of motion. The 55 degrees of flexion resulted in no permanent impairment rating for the leg. Dr. Raiford reported joint tenderness in appellant's left ankle but did not assign any additional permanent impairment due to pain. The weight of medical evidence does not establish that appellant sustained more than an 11 percent impairment of the left lower extremity.

The Board also finds that appellant is not entitled to a schedule award for the right leg.

Dr. Raiford noted that flexion of the knee greater than 110 degrees does not constitute a permanent impairment of the leg due to loss of motion. He noted that appellant had degenerative joint disease of the knee, which preexisted the employment injury. While a preexisting condition is included in a schedule award determination, there is no medical evidence of record showing that appellant's employment injuries caused any permanent impairment to the right knee. While Dr. Raiford noted that appellant had pain on palpation of the knee joint, there is no finding on whether the pain was due to the preexisting degenerative arthritis or was the result of the employment injury. The evidence only shows that the degenerative joint disease as a possible finding on which to base a schedule award determination. As the medical evidence shows that the degenerative joint disease preexisted the employment injuries and fails to show that the employment injuries caused a permanent aggravation of the right knee condition or any other injury to the right knee, the Office properly found that appellant had no permanent impairment of the right leg due to appellant's knee condition.

The decision of the Office of Workers' Compensation Programs, dated April 5, 2001, is hereby affirmed.

Dated, Washington, DC
April 22, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ A.M.A., *Guides*, p. 537, Tables 17-11 and 17-12.