

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARTHUR LEE BLACK and U.S. POSTAL SERVICE,  
POST OFFICE, Fresno, CA

*Docket No. 01-2014; Submitted on the Record;  
Issued April 4, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has more than a five percent impairment of his left leg for which he received a schedule award.

The Board finds that appellant has no greater than a five percent impairment for his left leg.

On January 21, 1998 appellant, then a 28-year-old letter carrier, filed a claim for a traumatic injury alleging that on January 9, 1998, he tore his left anterior cruciate ligament while in the performance of duty.

In a statement of accepted facts dated April 16, 2001, the Office of Workers' Compensation Programs noted that it had accepted left knee strain, left lateral meniscus tear and left knee arthroscopy on February 24, 1998. The Board notes that the Office did not include the Office's approval on January 28, 2001 of appellant's request for authorization for a second left knee arthroscopy. Surgery was performed on April 15, 2001 which resulted in a replacement of appellant's left anterior cruciate ligament with an allograft.

On May 23, 2001 the Office referred appellant to Dr. Mehendra Nath, Board-certified in physical medicine and rehabilitation, for an opinion regarding the degree and nature of his impairment.<sup>1</sup>

In a report dated June 1, 2001, Dr. Nath noted that he had examined appellant that day and submitted range of motion and strength findings. He determined that appellant had residual discomfort in the knee and minimal quadriceps weakness, but also noted that his left knee range of motion was "almost full." Dr. Nath stated that appellant was stable and could return to work.

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<sup>1</sup> The record does not contain the letter of referral to Dr. Nath.

The Office then referred Dr. Nath's report to Dr. Leonard A. Simpson, a Board-certified orthopedic surgeon and the Office's medical adviser.

In a report dated June 29, 2001, Dr. Simpson relied on Dr. Nath's medical findings and referenced those findings against the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001)<sup>2</sup> and recommended a five percent impairment of the left knee.<sup>3</sup>

By decision dated July 23, 2001, the Office awarded appellant a schedule award of five percent for the left leg noting that the period of award was from June 1 to July 14, 2001.

The Board finds that appellant is entitled to no more than a five percent schedule award of the left knee which the Office had previously made.

Under section 8107 of the Federal Employees' Compensation Act<sup>4</sup> and section 10.404 of the implementing federal regulations,<sup>5</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>6</sup>

In this case, Dr. Simpson, the Office medical adviser, relied on the raw clinical data of Dr. Nath, appellant's treating physician, and noted discomfort and swelling in the knee as a result of prolonged standing and recommended grading appellant's subjective complaints at maximal Grade III in accordance with the A.M.A., *Guides*.<sup>7</sup> Thus, appellant's pain, defined in the A.M.A., *Guides* as "some abnormal sensations or moderate pain, that may prevent some activities," was found to be 60 percent of a maximum of 7 percent for the femoral nerve,<sup>8</sup> which resulted in an impairment rating of 4.2 percent or rounded off to 4 percent for impairment for pain. He then relied on Dr. Nath's range of motion findings of flexion of 140 degrees<sup>9</sup> with zero

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<sup>2</sup> See *James E. Jenkins*, 39 ECAB 860 (1988). Further, the A.M.A., *Guides* note that they were prepared to allow one physician to use the raw clinical data of another physician to arrive at a uniform standardized evaluation.

<sup>3</sup> The Board notes that the statement of accepted facts does not include either the Office's March 19, 1999 authorization for appellant's second left knee arthroscopic procedure, nor the fact of the April 8, 1999 procedure. However, Dr. Simpson did include a review of this procedure in his evaluation.

<sup>4</sup> 5 U.S.C. §§ 8101, 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> See *Renee M. Straubinger*, 51 ECAB \_\_\_\_ (Docket No. 99-2149, issued September 18, 2000); *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>7</sup> A.M.A., *Guides*, 482, Table 16-10. (Dr. Simpson incorrectly noted page 42).

<sup>8</sup> *Id.* at 552, Table 17-37.

<sup>9</sup> Dr. Nath's narrative noted 40 degrees of flexion but his data chart noted 140 degrees of flexion range of motion.

percent extension which was a zero percent impairment; he noted quadriceps weakness on the left when compared to the right which measured one-half inch smaller than the right. This reduction was equal to 1.27 centimeters, which was equivalent to a 5 percent impairment.<sup>10</sup> Dr. Simpson also noted that according to the A.M.A., *Guides* weakness rating is not combined with a peripheral nerve injury<sup>11</sup> and thus appellant's schedule award would be five percent impairment for the left lower extremity or leg.<sup>12</sup> Dr. Simpson noted that appellant's date of maximum medical improvement was June 1, 2001 which was the date of Dr. Nath's evaluation.<sup>13</sup>

Dr. Nath did not indicate that he relied on the A.M.A., *Guides* nor did he make an impairment recommendation. Further, his clinical data can be readily extrapolated and evaluated within the tables and guidelines as presented. Although he was advised by the Office to use the A.M.A., *Guides*, his report did not indicate that he relied on the A.M.A., *Guides* in his evaluation. The Office properly based appellant's schedule award on the calculation of its Office medical adviser since he used the A.M.A., *Guides* (5<sup>th</sup> ed. 2000) and properly determined that appellant had no more than a five percent permanent impairment of his left lower extremity.

The medical evidence of record, therefore, does not establish more than a five percent permanent impairment to the left lower extremity in this case.

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<sup>10</sup> *Id.* at 530, Table 17-6. (the range of difference in circumference is from 1 to 1.9 centimeters and the corresponding range for lower extremity impairments is from 3 to 8 percent; Dr. Simpson rated the impairment at about half the range at 5 percent).

<sup>11</sup> *Id.* at 526, Table 17-2.

<sup>12</sup> Dr. Simpson also noted a zero percent impairment for appellant's anterior cruciate ligament and a two percent impairment for his partial lateral meniscectomy for which no value would be assigned.

<sup>13</sup> Dr. Nath noted that the date of maximum medical improvement was December 1998.

The decision of the Office of Workers' Compensation Programs dated July 23, 2001 is affirmed.<sup>14</sup>

Dated, Washington, DC  
April 4, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>14</sup> The Board notes that this case record contains evidence which was submitted subsequent to the Office's July 23, 2001 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).