

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD B. MASON and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, IN

*Docket No. 02-595; Submitted on the Record;
Issued August 2, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained more than 2 percent impairment to his right lower extremity and 12 percent impairment to his left lower extremity for which he received schedule awards.

The Board has duly reviewed the record and finds that appellant has no more than 2 percent impairment to his right lower extremity and 12 percent impairment to his left lower extremity.

The Office of Workers' Compensation Programs accepted appellant's claim for a left knee strain and aggravation of degenerative arthritis of both knees.

By decision dated September 19, 1998, the Office denied appellant's claim for compensation benefits, finding that the evidence of record established that he had no loss of wage-earning capacity. Appellant subsequently filed for a schedule award.

In a report dated May 15, 2001, appellant's treating physician, Dr. Joseph C. Randolph, a Board-certified orthopedic surgeon, stated that appellant had pain in both knees, a partial lateral meniscectomy of his right knee, medial and joint line tenderness bilaterally and a slight effusion in each knee with some mild patellofemoral crepitus bilaterally. He stated that appellant had surgery on the left knee and full range of motion on both knees. Dr. Randolph stated that manual testing showed that strength loss on the right side was 25 percent and that strength loss on the left was about 10 percent. In another report dated May 15, 2001, a physician's assistant to Dr. Randolph, Ted J. Westlund, applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) to determine that, based on Dr. Randolph's May 15, 2001 evaluation and the fact appellant had a partial meniscectomy of the right knee, appellant had a two percent permanent impairment to his right lower extremity. Mr. Westlund stated that, under the A.M.A., *Guides*, appellant's loss of strength of the left knee would be estimated at Grade 4 with a permanent impairment of 12 percent to the left lower extremity.

In a report dated August 29, 2001, the district medical adviser applied the A.M.A., *Guides* (5th ed. 2001) to determine that, under Table 17-33, p. 546, appellant's partial lateral meniscectomy of the right knee resulted in a 2 percent permanent impairment to the right lower extremity. The district medical adviser found that, using Table 17-8, p. 532, the Grade 4 weak extensor muscles of the left knee resulted in a 12 percent permanent impairment to the left lower extremity.

By decision dated September 17, 2001, the Office issued appellant schedule awards for a permanent impairment of 2 percent to the right leg and 12 percent to the left leg.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulations² 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.³

In this case, in his May 15, 2001 report, Dr. Randolph noted that appellant had a partial lateral meniscectomy of his right knee, had undergone surgery on his left knee, and had a strength loss of 25 percent on the right side and 10 percent on the left side. In his May 15, 2001 report, Dr. Randolph's physician assistant, Mr. Westlund, used the A.M.A., *Guides* (5th ed. 1995) to determine that appellant had a permanent partial impairment of 2 percent to his right lower extremity and 12 percent to his left lower extremity.⁴ The district medical adviser in his August 29, 2001 report obtained the same results. The district medical adviser properly used the A.M.A., *Guides* (5th ed. 2001) to determine that appellant's partial lateral meniscectomy of the right knee yielded a 2 percent permanent impairment under Table 17-33, p. 546, and his Grade 4 weak extensor muscles of the left knee yielded a 12 percent permanent impairment to the left lower extremity under Table 17-8, p. 532. Since the district medical adviser's use of the A.M.A., *Guides* was proper and he based his findings on Dr. Randolph's May 15, 2001 report, his determination of the extent of appellant's permanent partial impairment to his lower extremities was proper. Appellant has not shown that he sustained a greater permanent impairment than 2 percent to his right lower extremity and 12 percent to his left lower extremity.

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.404.

³ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 306, 308 (1986).

⁴ *See Bonnie M. Schreiber*, 46 ECAB 989, 992 (1995); *Kathy Marshall*, 45 ECAB 827, 834 (1994).

The September 17, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 2, 2002

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member