

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELBA S. BOWMAN and U.S. POSTAL SERVICE,
POST OFFICE, Hixson, TN

*Docket No. 01-1140; Submitted on the Record;
Issued January 22, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has greater than a two percent permanent loss of use of her left leg.

Appellant, then a 57-year-old rural carrier, sustained a tear of the medial meniscus of her left knee when she tripped on a tray of mail on August 6, 1999. On January 18, 2000 appellant underwent an arthroscopic subtotal medial meniscectomy and an excision of the medial synovial plica of her left knee.

On September 13, 2000 appellant filed a claim for a schedule award.

By letter dated October 5, 2000, the Office of Workers' Compensation Programs requested that appellant's attending physician, Dr. Alan C. Odom, evaluate the permanent impairment of her left leg. Dr. Odom referred appellant to Dr. David N. Bowers who examined appellant on October 18, 2000. After setting forth appellant's history and findings on physical examination, Dr. Bowers stated:

“Evaluation today in terms of her impairment rating is for the left medial meniscus tear and subtotal medial meniscectomy. I am not taking into consideration the severe degenerative joint disease in both knees as I understand that is not related to her injury. At this point, she does appear to have reached maximum medical improvement (MMI). The A[merican] M[edical] A[ssociation], *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, were utilized. Using the diagnosis-based estimates beginning on page 3/84, and Table 64 on page 3/85, she would have a 1 to 2 percent impairment of the whole person for the partial medial meniscectomy. When using the impairments based on physical examination, it is much more difficult to remove the component of the degenerative joint disease of the knee. Page 3/76, Table 36, titled Lower Limb Impairment from Gait Derangement would indicate a mild degree of impairment in the 7 to 10 percent range of the whole person. This is

most likely largely related to her arthritis. She does not demonstrate significant muscle atrophy or lower extremity weakness that would contribute to an impairment rating. Although she does have 15 degrees less flexion of the left knee than she does on the right, it is still greater than 110 degrees and so would not classify her as being a mild impairment of the whole person with regard to range of motion using Table 41 on page 3/78. Also her valgus deformity is not to the degree that it would qualify for further impairment rating.

“Taking into consideration all the factors, it is my impression that the permanent partial impairment in regard to her left medial meniscus tear and partial meniscectomy is three percent of the whole person.”

On February 2, 2001 an Office medical adviser reviewed Dr. Bowers’ report and stated that it showed a two percent permanent loss of the left leg for a partial meniscectomy, according to the fifth edition of the A.M.A., *Guides*.

By decision dated February 8, 2001, the Office issued appellant a schedule award for a two percent permanent loss of use of her left leg.

The Board finds that appellant has no greater than a two percent permanent loss of use of her left leg.

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² 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.

In his October 18, 2000 report, Dr. Bowers evaluated each of the impairments of appellant’s left leg, and pointed out that she did not have significant muscle atrophy or weakness that would contribute to an impairment rating. Dr. Bowers also pointed out that the range of motion of appellant’s left knee was greater than 110 degrees and the valgus deformity was under 10 degrees, and that these impairments therefore were not ratable under the A.M.A., *Guides*. Dr. Bowers also noted that appellant appeared to have a similar degree of degenerative changes in both knees, and the degenerative joint disease of appellant’s left knee is not an accepted condition and therefore is not a basis for an impairment rating. He attributed appellant’s gait derangement to her arthritis, and gait derangement is ratable under the A.M.A., *Guides* only with use of an assistive device, which appellant did not use.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

The only ratable impairment under the A.M.A., *Guides* was for the partial meniscectomy, and the A.M.A., *Guides* provide that this constitutes a two percent impairment of the lower extremity.³ The Office properly issued a schedule award for a two percent permanent loss of use of appellant's left leg.

The decision of the Office of Workers' Compensation Programs dated February 8, 2001 is affirmed.

Dated, Washington, DC
January 22, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

³ An Office medical adviser properly used the fifth edition of the A.M.A., *Guides*. *Leissa D. Vassar*, 40 ECAB 1287 (1989). However, the tables for the fourth edition used by Dr. Bowers are identical for all the impairments described by Dr. Bowers.