

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH J. COTTLE and U.S. POSTAL SERVICE,
POST OFFICE, Aurora, IL

*Docket No. 01-1246; Submitted on the Record;
Issued January 4, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has more than a 15 percent permanent impairment of the right lower extremity, for which she received a schedule award.

On August 31, 1994 appellant, then a 30-year-old mailhandler, sustained an injury to her right knee while in the performance of duty. The Office of Workers' Compensation Programs initially accepted appellant's claim for right knee contusion and later expanded the claim to include permanent exacerbation of preexisting right knee conditions, chronic osteoarthritic right knee and right knee degenerative lateral meniscal tear. Additionally, the Office authorized a September 30, 1997 arthroscopic lateral and medial meniscectomy and debridement and a May 14, 1998 right total knee replacement arthroplasty.

On May 5, 1998 the Office granted appellant a schedule award for a 14 percent permanent impairment of her right lower extremity. The award covered a period of 40.32 weeks.

Following appellant's May 14, 1998 total knee replacement arthroplasty, the Office issued a second schedule award on February 22, 2001. Based upon the recommendation of its medical adviser, the Office granted appellant a schedule award for an additional one percent permanent impairment of her right lower extremity.¹ The award covered a period of 2.88 weeks.

The Board finds that appellant established that she has more than a 15 percent permanent impairment of the right lower extremity.

¹ The Office medical adviser calculated a 15 percent permanent impairment of the right lower extremity. As appellant had previously received compensation for a 14 percent permanent impairment of her right lower extremity, the Office reduced the present award by the amount previously received.

Section 8107 of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.³

Appellant alleges that she has a 25 percent permanent impairment of her right lower extremity based on the June 3, 1999 report of her orthopedic surgeon, Dr. Jeffrey L. Piccirillo. Although Dr. Piccirillo stated that appellant had a "permanent disability" of approximately 25 percent "correlated with the A.M.A., *Guides*, Fourth Edition," he did not otherwise reference the A.M.A., *Guides*. Thus, it is unclear how Dr. Piccirillo specifically arrived at his approximate 25 percent impairment rating. As such, Dr. Piccirillo's rating is of diminished probative value in determining the extent of appellant's permanent partial impairment.⁴

The February 22, 2001 schedule award for permanent impairment of appellant's right lower extremity was based on the September 11, 1999 report of the Office medical adviser, who reviewed the relevant medical evidence, including the physical findings reported by Dr. Piccirillo on June 3, 1999. The Office medical adviser calculated a 15 percent impairment rating based on appellant's May 14, 1998 total knee replacement arthroplasty. He characterized the results of appellant's May 14, 1998 surgery as "good" and applied the diagnosis-based estimates provided at Table 64 at page 85 of the A.M.A., *Guides* (4th ed. 1993). Under Table 64, a total knee replacement with good results corresponds to a 15 percent whole-person impairment and a 37 percent lower extremity impairment.⁵ In his September 11, 1999 report, the Office medical adviser mistakenly reported a 15 percent whole-person impairment as the permanent impairment of the right lower extremity rather than the applicable lower extremity impairment rating of 37 percent. In view of this error, the February 22, 2001 decision will be modified to reflect appellant's entitlement to a 37 percent permanent impairment of the right lower extremity.⁶

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

⁵ The impairment rating is consistent with the ratings under Table 17-33 at page 547 of the A.M.A., *Guides* (5th ed. 2001), which became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001).

⁶ The Act provides that, for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks of compensation. 5 U.S.C. § 8107(c)(2). In the instant case, appellant does not have a total, or 100 percent loss of use of her right leg, but rather a 37 percent loss. As such, appellant is entitled to 37 percent of the 288 weeks of compensation, which is 106.56 weeks. Appellant has already received 43.2 weeks of compensation, representing a combined 15 percent impairment. Accordingly, appellant is entitled to an additional 63.36 weeks of compensation.

The February 22, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed as modified.

Dated, Washington, DC
January 4, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member