

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA Y. HARRIS and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 00-686; Oral Argument Held April 23, 2002;
Issued July 15, 2002*

Appearances: *Donna Y. Harris, pro se; Jim C. Gordon, Jr., Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant is entitled to a greater than 30 percent impairment rating of her right lower extremity for which she received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to compensation benefits for wage loss during the period between July 17, 1999 and March 12, 2001, the period she received compensation for a schedule award.

On May 15, 1996 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that she fractured her pelvis and broke her right knee when she was struck by an automobile while crossing the street to report a minor vehicle accident. The Office accepted the claim for a right knee fracture, a right pelvis fracture and authorized physical therapy. Appellant filed a claim for a schedule award on August 22, 1998.

In a report dated October 1, 1997, Dr. John B. Naiman, an attending Board-certified orthopedic surgeon, concluded that appellant had a 30 percent impairment rating of her right lower extremity. He noted that appellant had fractured her right tibial plateau and had "some associated tenderness over the medial collateral ligament and that she has also "bruised her peroneal nerve and does have some subtle symptoms in the deep peroneal distribution." In reaching his impairment rating for her right lower extremity, Dr. Naiman concluded that appellant had a 25 percent impairment due to loss of endurance, loss of range of motion, pain and atrophy due to the right knee injury. Regarding impairment of her right hip, he noted that appellant had "suffered an avulsion of the ASIS and does have some heterotopic ossification and pain" which resulted in an additional five percent impairment. Thus, appellant's total impairment rating of the right lower extremity was 30 percent.

In a July 27, 1998 report, the Office medical adviser reviewed Dr. Naiman's report and concluded that appellant had a 24 percent impairment of the right lower extremity.

In a report dated November 30, 1998, Dr. Mirza A. Baig, a second opinion physician specializing in orthopedic surgery, concluded that appellant had a 30 percent impairment of the right lower extremity. In support of this determination and after considering the factors of weakness, pain, loss of function, loss of endurance and atrophy, Dr. Baig determined that appellant had a 25 percent impairment of her right leg and a 5 percent impairment of her right hip for a total impairment of 30 percent of the right lower extremity.

By decision dated August 12, 1999, the Office granted appellant a schedule award for a 30 percent permanent impairment of the right lower extremity. The award was for 76.40 weeks and covered the period July 17 through August 14, 1999.

By decision dated August 13, 1996, the Office determined that appellant was not entitled to a simultaneous schedule award and compensation for partial disability of two hours per day.

The Board finds that appellant has no greater than a 30 percent impairment rating of her right lower extremity for which she received a schedule award.

Section 8107 of the Federal Employees' Compensation Act¹ provides that, if there is permanent disability involving the loss or loss of use of a specific enumerated member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² The Act does not specify the manner by which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.³

In the instant case, the Office relied upon the opinion of Dr. Naiman, appellant's attending physician, in determining that appellant had a 30 percent impairment of her right lower extremity. The only other relevant medical evidence addressing this issue is the July 27, 1998 report by the Office medical adviser which found that appellant had a 24 percent impairment of the right lower extremity. The record contains no medical evidence establishing that appellant has more than a 30 percent impairment of the right lower extremity under the protocols of the A.M.A., *Guides*. As there is no medical evidence supporting a higher award, the Office properly granted appellant a schedule award for a 30 percent impairment of the right lower extremity.

¹ 5 U.S.C. § 8107.

² *Id.* This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ *Mary L. Henninger*, 51 ECAB _____ (Docket No. 00-552, issued June 20, 2001); 20 C.F.R. § 10.404 (1999). The Office first utilized American Medical Association, *Guides to the Permanent Impairment of the Extremities and Back*, published in the Journal of the American Medical Association, Special Edition, February 15, 1958. From 1958 until 1971 a series of 13 A.M.A., *Guides* was published in the Journal of the A.M.A., The A.M.A., published the first hardbound compilation edition of the A.M.A., *Guides* in 1971, which revised the previous series of JAMA *Guides*.

The Board finds that the Office properly determined that appellant was not entitled to compensation benefits for wage loss during the period between July 17, 1999 and March 12, 2001.

To the extent that appellant seeks payment of compensation for temporary total disability during the same period as entitlement to a schedule award, the Office properly found that appellant would not be entitled to concurrent payments. It is well settled that an employee cannot concurrently receive compensation under a schedule award and compensation for wage loss.⁴ In *Orlando Vivens*,⁵ the claimant sustained injuries to both legs and lower back resulting from a single employment incident. The Board found that appellant was not entitled to concurrent benefits for a schedule award and wage loss. In this case, appellant sustained a right knee fracture and right pelvis fracture due to her accepted employment injury. Prior to the issuance of the schedule award, appellant had returned to limited-duty work six hours per day. As the Office properly found, in its August 13, 1999 decision, appellant would not be entitled to concurrent benefits in this case for both the schedule award and compensation for two hours of wage loss.

The decisions of the Office of Workers' Compensation Programs dated August 13 and 12, 1999 are hereby affirmed.

Dated, Washington, DC
July 15, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ See *Arthur E. Billigmeier*, 42 ECAB 506 (1991); *Robert T. Leonard*, 34 ECAB 1687 (1983); *Marie J. Born*, 27 ECAB 623 (1976); *Stanley F. Stuczynski*, 12 ECAB 159 (1960).

⁵ 42 ECAB 303 (1991).