

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY N. CROMER and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 01-1850; Submitted on the Record;
Issued July 2, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he has greater than a 50 percent permanent impairment of his left lower extremity and a 41 percent permanent impairment of the right lower extremity, for which he received a schedule award.

On March 23, 1989 appellant, a 37-year-old clerk, injured his left knee when he tripped and fell to the ground. He filed a claim for benefits on March 24, 1989, which the Office of Workers' Compensation Programs accepted for a fractured left tibia. By decision dated July 13, 1992, the Office granted appellant a schedule award for a 28 percent permanent impairment of the left leg for the period from January 31, 1992 to August 17, 1993 for a total of 80.64 weeks of compensation.

On September 10, 1995 appellant filed a CA-2 claim form based on occupational disease, alleging that factors of his employment; *e.g.*, repeated bending, lifting and prolonged standing, had resulted in an arthritic condition in his left knee. The Office accepted the claim on January 2, 1996 for aggravation of post-traumatic left knee arthritis.

By decision dated July 13, 1992, the Office granted appellant an additional 22 percent permanent impairment of the left leg under the schedule for the period from May 29, 1996 to August 15, 1997 for a total of 63.36 weeks of compensation.

On July 21, 1997 appellant filed a CA-2 claim form based on occupational disease, alleging that he had developed a consequential arthritic condition in his right knee causally related to his accepted left knee condition. The Office subsequently expanded its acceptance to include the condition of aggravation of preexisting right knee arthritis.

On April 9, 1998 appellant filed a CA-7 claim form for a schedule award based on the partial loss of use of his right leg, stemming from his accepted 1995 employment injury.

By decision dated October 15, 1999, the Office granted appellant a schedule award for a 31 percent permanent impairment of the right leg for the period from November 6, 1999 to July 22, 2000 for a total of 89.28 weeks of compensation.

On July 14, 2000 appellant filed a CA-7 claim form for an additional schedule award based on the partial loss of his right and left legs, stemming from his accepted employment conditions.

Appellant submitted an August 30, 2000 report from Dr. Jonathan W. Bell, a Board-certified orthopedic surgeon, who stated:

“[Appellant] has been treated for longstanding aggravation of arthritis of his left knee since March 1989. He underwent a prolonged course of conservative care, which [he] eventually failed. In June 1998, [appellant] underwent a left total knee arthroplasty. He had somewhat of a delay in recovery from this surgery that left him with significant pain and swelling in the early postoperative period, most of which has eventually resolved. [Appellant] has had some irritation of the knee following surgery from some reinjuries with relatively minor stresses to the knee and had pain for a significant duration of time prior to his knee replacement surgery.

“According to the [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition)], [the A.M.A., *Guides*], for a diagnosis-based estimate, Table 64, [appellant] is considered to have an impairment rating of 50 percent of the left lower extremity secondary to having undergone a knee replacement with a fair result.”

By letter dated January 17, 2001, the Office advised appellant that it had confused Dr. Bell’s finding of a 50 percent loss of use of his left leg with the impairment pertaining to his right leg and had inadvertently computed an additional 19 percent impairment for his left leg. The Office therefore, asked appellant to have Dr. Bell reevaluate each leg pursuant to the A.M.A., *Guides*.

In a report dated March 12, 2001, Dr. Bell stated:

“Regarding [appellant’s] left knee, he continues to have pain on an occasional basis. His range of motion is from 10 to 90 degrees. [Appellant] has a moderate degree of instability. He also has an eleven degree lag of extension and twelve degree contracture and six degrees of varus malalignment. According to Table 66 of [the A.M.A., *Guides*], a total knee arthroplasty shows that he has had a fair result, which equates to a 50 percent impairment rating for the left lower extremity.

“With regards to [appellant’s] right knee, he continues to have pain. His diagnosis based impairment rating shows that his x-rays have 2 mm [millimeter] of joint space, equating [to] a 20 percent impairment. [Appellant] has significant [anterior collateral ligament] instability due to an absence of his [anterior collateral ligament] from his previous surgery, which contributes 25 percent to his

impairment rating. He is status post lateral meniscectomy, which includes two percent. To summarize this, [appellant] has a 47 percent impairment rating of his right knee, according to [the A.M.A., *Guides*].”

In a memorandum/impairment evaluation dated March 12, 2001, an Office medical adviser, using the updated fifth edition of the A.M.A., *Guides*, found that appellant had a 50 percent impairment of the left lower extremity and a 41 percent impairment of the right lower extremity. With regard to the left lower extremity, the Office medical adviser, using Table 17-35 at page 549 of the A.M.A., *Guides*, calculated 74 total points for a total knee replacement, which totaled a 50 percent impairment of the left lower extremity, based on the classification of “fair result” pursuant to Table 17-33 at page 547 of the A.M.A., *Guides*.

With regard to the right lower extremity, the Office medical adviser derived at 25 percent impairment from severe laxity of appellant’s right anterior collateral ligament, pursuant to Table 17-33 at page 546 of the A.M.A., *Guides*; two percent impairment from a partial meniscectomy of the right leg, pursuant to Table 17-33 at page 546 of the A.M.A., *Guides*; and a 20 percent impairment from a two millimeter cartilage interval pursuant to Table 17-31 at page 544 of the A.M.A., *Guides*. Using the Combined Values Chart, the Office medical adviser calculated a 41 percent impairment of the right lower extremity.

In a memorandum dated April 4, 2001, the Office noted the error it had made by adding an additional 19 percent to his schedule award for the left lower extremity and stated that this error had been corrected and payment adjusted accordingly. The Office further stated that the case was resubmitted to the Office medical adviser for recalculation under the fifth edition of the A.M.A., *Guides* and that pursuant to this recalculation, appellant had been granted an additional 10 percent impairment for his right lower extremity, for a total 41 percent impairment. The impairment rating for the left lower extremity remained 50 percent.

By decision dated April 6, 2001, the Office found that appellant was entitled to a 50 percent impairment of the left lower extremity and a 41 percent impairment of the right lower extremity under the schedule. The Office stated that the additional 10 percent impairment awarded for the right lower extremity translated into 201.60 days of compensation; it noted that the payment inadvertently issued for the left lower extremity from July 25 to December 5, 2000 translated into 134 days of compensation, which was, to correct the previous error, subtracted from the 201.60 days awarded for the additional 10 percent for the right lower extremity, so that appellant would now receive 67.6 days of compensation, commencing December 6, 2000.

The Board finds that appellant has no more than a 50 percent impairment of the left lower extremity and a 41 percent impairment of the right lower extremity, for which he received a schedule award.

The schedule award provision of the Federal Employees’ Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of

¹ 5 U.S.C. §§ 8101-8193; see 5 U.S.C. § 8107(c).

compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.

In this case, the Office properly found that appellant was entitled to a 50 percent impairment of the left lower extremity and a 41 percent impairment of the right lower extremity based on the Office medical adviser's recalculation of Dr. Bell's findings, which were contained in his March 12, 2001 report. With regard to the left lower extremity, the Office medical adviser took Dr. Bell's findings of a total knee arthroplasty and arrived at the same 50 percent impairment rating, based on a "fair result," in conformance with the fifth edition of the A.M.A., *Guides*.

With regard to the right lower extremity, the Office medical adviser awarded appellant an additional ten percent impairment based on the calculations of the Office medical adviser, who relied on Dr. Bell's findings of severe laxity of appellant's right anterior collateral ligament, a partial meniscectomy of the right leg, and a two millimeter cartilage interval. The Office medical adviser combined the total impairment derived from these findings and, utilizing the Combined Values Chart, arrived at a 41 percent impairment of the right lower extremity.

The Board finds that the Office medical adviser correctly applied the fifth edition of the A.M.A., *Guides* in determining that appellant has no more than a 50 percent impairment of the left lower extremity and a 41 percent impairment of the right lower extremity, for which he has received a schedule award from the Office. Appellant has failed to provide sufficient medical evidence that he has greater than the impairment for which he has already been awarded.

² 5 U.S.C. § 8107(c)(19).

The decision of the Office of Workers' Compensation Programs dated April 6, 2001 is hereby affirmed.

Dated, Washington, DC
July 2, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member