

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL S. LOUDEN and U.S. POSTAL SERVICE,  
POST OFFICE, Riverton, NJ

*Docket No. 02-118; Submitted on the Record;  
Issued July 5, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has greater than a 20 percent permanent impairment of the right lower extremity for which he received a schedule award.

On August 5, 1997 appellant, then a 33-year-old letter carrier, filed a notice of traumatic injury alleging that he tripped on steps and wrenched his right knee while delivering his route. The Office of Workers' Compensation Programs accepted the claim for right medial meniscus tear and right anterior cruciate ligament tear. Appellant underwent reconstructive surgery for the right anterior cruciate ligament on September 17, 1997. Postoperative complications resulted in a screw projecting cruciate tibia. On September 8, 1999 appellant also had arthroscopic surgery with removal of a protruding cruciate tibial screw. He then underwent a course of physical therapy and was placed in a leg brace. Appellant began part-time duty on October 19, 1999 and gradually returned to full-time work.

On January 8, 1999 appellant filed a Form CA-7 claim for a schedule award.

In a report dated July 21, 2000, Dr. Nicholas P. Diamond, a Board-certified pain management specialist and appellant's treating physician, indicated that he had examined appellant on July 20, 2000. On physical examination he reported surgical scars over the lateral aspect of the right knee measuring 8 centimeters (cm), lateral aspect of the right knee measuring 1 cm, mid line of the right knee measuring 13 cm, medial aspect of the right knee measuring 3 cm. He noted quadricep atrophy, crepitus, effusion and numbness along the lateral aspect of the right knee. Isolated testing of the quadriceps musculature was 4+/5. Dr. Diamond noted that appellant had difficulty kneeling and squatting. Positive valgus and varus stress tests were also noted. Range of motion was listed as flexion 130 and extension of 140 degrees with pain. Motor strength was 4+/5 involving the right lower extremity, with upper leg circumference measuring 42 cm on the right versus 43 cm on the left, and lower leg circumference measuring 41 cm on the right versus 42 cm on the left. Dr. Diamond indicated that appellant had a 2 percent impairment for sensory deficit of the right lateral sural nerve according to Table 39, page 77 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He further noted a 12 percent impairment of 4/5 quadricep motor strength deficit under Table 39,

page 77, and 17 percent impairment for medial collateral ligament laxity under Table 64, page 85 of the A.M.A., *Guides*. He calculated appellant's total impairment to the right lower extremity to be 28 percent.

The Office referred a copy of Dr. Diamond's July 21, 2000 report to an Office medical adviser for review. On September 28, 2000 the Office medical adviser agreed that appellant had 2 percent impairment due to sensory deficit and 12 percent impairment due to quadriceps motor strength deficit. Under Table 64, page 85 of the A.M.A., *Guides*, he opined that appellant had only seven percent mild impairment for medial collateral ligament laxity, noting that Dr. Diamond did not specifically mention the degree of laxity and only stated that there was positive ligament laxity. Under the Combined Values Chart, the Office medical adviser concluded that appellant had 20 percent impairment of the right lower extremity.

In a decision dated October 17, 2000, the Office issued a schedule award for a 20 percent permanent impairment of the right lower extremity.

Appellant subsequently requested a hearing, which was held on April 24, 2000.

In a decision dated July 16, 2001, an Office hearing representative affirmed the Office's October 17, 2000 decision.

The Board finds that the case is not in posture for a decision as to the extent of permanent impairment of appellant's right leg.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing federal regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>3</sup> 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.<sup>4</sup>

In this case, Dr. Diamond has opined that appellant has 17 percent impairment for medial collateral ligament laxity under Table 64, page 85 of the A.M.A., *Guides*. In contrast, the Office medical adviser determined that appellant had only 7 percent impairment for the degree of his ligament laxity. When the Office hearing representative reviewed this case, he determined that there was no conflict in the medical record between these two physicians, noting that Dr. Diamond did not provide any physical findings with respect to the degree and extent of MCL

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> See 20 C.F.R. § 10.404 (1999).

ligament laxity to support his conclusion that appellant had moderate as opposed to mild ligament laxity. The Office hearing representative found that since Dr. Diamond failed to substantiate a 17 percent impairment for moderate ligament laxity, it was reasonable to affirm the Office medical adviser's finding of 7 percent impairment for mild ligament laxity. The Board, however, finds such an analysis of the medical opinion evidence to be contrary to law.

With regard to appellant's ligament laxity, Table 64 of the A.M.A., *Guides* provides for a 7 percent impairment for "mild" laxity and for a 17 percent impairment for "moderate" laxity. It was inappropriate for the Office medical adviser to rate this impairment as "mild," without any explanation or any reference to any particular findings on Dr. Johnson's examination to justify rating the laxity as mild rather than moderate.<sup>5</sup> The Office medical adviser noted only that Dr. Diamond reported "positive" ligament laxity. There is no explanation given by the Office medical adviser as to why a "positive" finding of ligament laxity is sufficient only to support a finding of mild impairment. If appellant has "positive" findings for ligament laxity, the question remaining is why should it not be a moderate impairment as suggested by the examining physician. In light of the fact that there is a discrepancy between Dr. Diamond and the Office medical adviser as to whether appellant's ligament laxity is mild or moderate and what role, if any, the collateral ligament played in this determination, the case will be remanded to the Office to refer appellant, the case record and a statement of accepted facts to an impartial specialist pursuant to section 8123 of the Act for an examination and opinion as to the extent of permanent impairment of appellant's right lower extremity.

The decision of the Office of Workers' Compensation Programs dated July 16, 2001 is hereby set aside, and the case remanded for further consideration consistent with this opinion.

Dated, Washington, DC  
July 5, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> See *John Keller*, 39 ECAB 543 (1988) (the Board stated that "an Office medical adviser, as a nonexamining physician, cannot select a percentage without any explanation or reference to the examining physician's findings").