

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRITZ A. KLEIN and U.S. POSTAL SERVICE,
POST OFFICE, Southeastern, PA

*Docket No. 02-199; Submitted on the Record;
Issued July 3, 2002*

DECISION and ORDER

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

The issue is whether appellant has more than a 75 percent permanent impairment of his right lower extremity, for which he received a schedule award.

Appellant's claim, filed on March 16, 1976 after he tripped over Christmas lights on some steps while delivering the mail, was accepted for a hyperextension injury to his right knee, with aggravation of preexisting chondromalacia and total knee replacement, as well as torn menisci of both knees. Appellant underwent extensive surgeries and treatment but continued working intermittently until he retired in April 1996.

Appellant received schedule awards on March 1, 1979 for 20 percent permanent impairment of his right lower extremity; on July 3, 1986 for another 10 percent impairment;¹ on May 11, 1988 for an additional 23 percent impairment; and on November 26, 1996 for an additional 22 percent, following a second knee replacement, for a total of 75 percent impairment.²

On October 3, 2000 appellant requested an additional schedule award following his third right knee replacement. He submitted a report from Dr. Jess H. Lonner, a Board-certified orthopedic surgeon, who stated that appellant had reached maximum medical improvement on September 15, 2000, that he retained active flexion of 90 degrees and extension of minus 10 degrees, that there was additional impairment of function due to weakness, atrophy, pain or discomfort, and that an impairment rating of 95 percent of the right lower extremity was recommended.

¹ This award was appealed to the Board, which set aside the Office of Workers' Compensation Programs' decision and remanded the case for further evidentiary development. Docket No. 87-929 (issued July 21, 1987).

² On January 12, 1999 appellant received a 50 percent schedule award for permanent impairment of his left lower extremity. The award ran from December 20, 1997 to September 22, 2000.

On February 23, 2001 the Office denied an additional schedule award on the grounds that the 75 percent rating was the maximum allowed. Appellant requested reconsideration and submitted a June 15, 2001 report from Dr. Lonner. On September 27, 2001 the Office denied appellant's request, noting that the maximum allowable rating of 75 percent included impairment due to pain, loss of motion, stability and alignment.

The Board finds that appellant is entitled to no more than a 75 percent permanent impairment of his right lower extremity, for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act³ 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.⁴ 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁵ 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 award losses.⁶

In this case, Dr. Lonner referred generally to the A.M.A., *Guides* in his November 7, 2000 report but did not specify on which edition he based his 95 percent impairment rating or how he had calculated such a rating in conformance with the protocols of the A.M.A., *Guides*. In his June 15, 2001 report, Dr. Lonner mentioned no edition of the A.M.A., *Guides* and stated that appellant should be considered 100 percent permanently disabled, with impairment rating of at least 95 percent.

The multiple surgeries, including the most recent on March 21, 2001 and the complex condition of appellant's right knee, had compromised the bone stock, which required grafting with a customized implant. Postoperatively, appellant developed a prosthetic fracture, which required an open reduction/internal fixation. The fracture became a nonunion and secondary surgery, including bone grafting, was necessary. Dr. Lonner reported that appellant's knee was quite stiff and he continued to suffer pain and dysfunction due to the surgeries.

The Board has held that a medical opinion not based on the appropriate edition of the A.M.A., *Guides* has diminished probative value in determining the extent of a claimant's permanent impairment.⁷ Because Dr. Lonner's opinion was not based on the A.M.A., *Guides*

³ 5 U.S.C. §§ 8101-8109.

⁴ 5 U.S.C. § 8107.

⁵ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Carolyn E. Sellers*, 50 ECAB 393, 394 (1999).

and therefore could not establish an impairment rating, the Office properly requested that its medical adviser review Dr. Lonner's reports and determine a proper rating.⁸

The Office medical adviser stated on January 8, 2001 that a 75 percent rating for a total knee replacement was the maximum allowed under the fourth edition of the A.M.A., *Guides*, according to Table 64, page 85 for a "poor result" and that no additional award was indicated. In its September 27, 2001 decision, the Office properly consulted the fifth edition of the A.M.A., *Guides* and determined that the maximum rating for a poor result covered the additional pain and instability.⁹

The fifth edition of the A.M.A., *Guides* points out that diagnosis-based estimates (DBE) may be used to evaluate lower extremity impairments caused by various surgical procedures, including joint replacements.¹⁰ Table 17.2 provides that a DBE evaluation covers gait derangement, muscle atrophy and strength, and range of motion.¹¹ Table 17.35 addresses knee replacement results, assessing points for pain, range of motion, and stability, with deductions made for flexion, extension and alignment.¹²

Applying these points to Table 17-33, which covers a variety of conditions affecting the knee, the Office medical adviser considered Dr. Lonner's description of appellant's failed knee prosthesis and resultant bone surgery. The Office medical adviser thus determined that appellant had a poor result, which is a 75 percent rating.¹³ The fifth edition of the A.M.A., *Guides* does not provide for any greater rating for a total knee replacement.

Inasmuch as the Office properly applied the fifth edition of the A.M.A., *Guides* to the medical evidence, appellant is entitled to no more than a 75 percent permanent impairment of his right lower extremity.

⁸ See *Denise D. Cason*, 48 ECAB 530, 531 (1997) (finding that although appellant's physician found a greater impairment rating, he failed to explain the basis of his opinion, and the Office medical adviser properly applied the "Diagnosis Based Estimates" in the fourth edition of the A.M.A., *Guides* to determine the correct percentage of impairment).

⁹ The fifth edition of the A.M.A., *Guides* became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*, even if the amount of the award was calculated prior to that date. This bulletin also explains:

"As with previous revisions to the A.M.A., *Guides*, awards made prior to February 1, 2001 should not be recalculated merely because a new edition of the A.M.A., *Guides* is in use. A claimant who has received a schedule award under a previous edition may later make a claim for an increased award, which should be calculated according to the fifth edition."

¹⁰ A.M.A., *Guides*, Table 17.2, page 525.

¹¹ *Id.* at 526.

¹² *Id.* at 549.

¹³ *Id.* at 547.

The September 27 and February 23, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 3, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member