

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICK L. WIGGINGTON and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

*Docket No. 01-2143; Submitted on the Record;
Issued June 25, 2002*

DECISION and ORDER

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

The issue is whether appellant has established that he has greater than a 5 percent permanent impairment of his left lower extremity and a 15 percent permanent impairment of his right lower extremity, for which he received a schedule award.

On July 17, 1991 appellant, a 41-year-old mailhandler, injured his right knee and right leg when his right leg was pinned between a desk and a conveyor belt. Appellant filed a claim for benefits on the date of injury, which was accepted by the Office of Workers' Compensation Programs for multiple contusions, right proximal fibula fracture and right peroneal nerve contusion. The Office extended its acceptance of the claim to include the condition of right knee internal derangement with tenosynovitis.

By decision dated April 15, 1993, the Office granted appellant a schedule award for a 15 percent permanent impairment of the right lower extremity.¹

On February 1, 1997 appellant slipped while walking in an icy parking lot, injuring both knees. He filed a claim for benefits on the date of injury, which the Office accepted on July 9, 1997 for left low back strain and left knee strain.

On February 19, 1998 appellant filed a Form CA-7, claim for an additional schedule award based on the partial loss of use of his left and right lower extremities, stemming from his accepted 1991 and 1997 employment injuries.

By decision dated September 10, 1998, the Office denied appellant's claim for an additional schedule award.

¹ The original claim form pertaining to the July 17, 1991 injury and the April 15, 1993 Office schedule award for appellant's right leg are not contained in the record. They are referenced in the statement of accepted facts.

By letter dated September 14, 1998, appellant requested an oral hearing, which was held on March 26, 1999.

By decision dated June 11, 1999, an Office hearing representative set aside the September 10, 1998 Office decision and remanded the case for an impairment evaluation of appellant's left and right lower extremities.

Dr. Eric E. Borofsky, a Board-certified orthopedic surgeon and appellant's treating physician, submitted reports dated August 11 and 28, 2000. These reports, however, merely stated findings on examination and did not contain an impairment evaluation in accordance with the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (fourth edition).

The Office referred appellant for a second opinion examination and impairment evaluation with Dr. Jerry A. Matlen, a Board-certified orthopedic surgeon. In a report dated October 24, 2000, he stated:

“Based on my review of the x-rays done to date, as well as regular views of the knees bilaterally from October 1999 and comparison of these studies, there is no interval change in terms of the height of the cartilage. The amount of the cartilage interval in the medial, lateral and sunrise views all measure five [millimeters] on the medial compartments bilaterally and six [millimeters] on the lateral compartments bilaterally. The patellofemoral films reveal three [millimeters] interval on the lateral facets bilaterally and six [millimeters] on the medial facets bilaterally. Given these particular measurements and looking at the arthritis impairment chart, this comes out to be approximately a five [percent] impairment for each extremity and approximately a ten [percent] impairment for the whole person. This impairment rating is based on x-ray evaluations that were done on October 23, 2000 and compared to studies of October 19, 1999.”

In a memorandum/impairment work sheet dated January 3, 2001, an Office medical adviser determined that appellant had a five percent impairment of the right and left lower extremities. Relying on Dr. Matlen's findings that appellant had crepitation of the patellofemoral compartments in his left and right knees, the Office medical adviser accorded appellant a 5 percent impairment of the left knee pursuant to Table 62, page 83, of the A.M.A., *Guides*. However, the Office medical adviser, noting that appellant had previously been accorded a 15 percent award for his right lower extremity and that the condition of his right leg had not markedly changed since that time, found that appellant was not entitled to an additional award for the right lower extremity.

By decision dated January 9, 2001, the Office granted appellant a schedule award for a 5 percent permanent impairment of the left lower extremity for the period May 31 to September 8, 2000 for a total of 14.4 weeks of compensation. The Office found that appellant had already received an award for a 15 percent permanent impairment rating in his right leg and was not entitled to an additional award for his right lower extremity.

The Board finds that appellant has no greater than a 5 percent permanent impairment of his left lower extremity and a 15 percent permanent impairment of his right lower extremity, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act² 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 award. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ 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* (fourth edition) as the standard to be used for evaluating schedule losses.⁴

In this case, the Office determined that appellant had a five percent permanent impairment of his left and right lower extremities based on Dr. Matlen's finding that appellant had crepitation of the patello-femoral compartments in both his left and right knees. The Office medical adviser then applied this finding to the applicable table of the A.M.A., *Guides* to arrive at the total percentage of impairment in appellant's left and right lower extremity. In addition, the Office medical adviser found that appellant was not entitled to an award based on additional impairment to his right lower extremity given the fact that he had already received an award based on a 15 percent impairment and that the condition of his right leg had not measurably worsened since that time.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 5 percent permanent impairment for loss of use of his left lower extremity, for which he has received a schedule award from the Office and that appellant has failed to provide probative, supportable medical evidence that he has greater than the 5 percent impairment already awarded or the 15 percent permanent impairment for his right knee.

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

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

The decision of the Office of Workers' Compensation Programs dated January 9, 2001 is hereby affirmed.

Dated, Washington, DC
June 25, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member