

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS MARSHALL and U.S. POSTAL SERVICE,
SEVEN OAKS STATION, Detroit, MI

*Docket No. 02-1589; Submitted on the Record;
Issued November 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has greater than a two percent permanent loss of use of his left leg.

On June 3, 1995 appellant, then a 34-year-old letter carrier, filed a claim for a traumatic injury to his left knee sustained on May 30, 1995 when he tripped and stepped in a hole.

The Office of Workers' Compensation Programs accepted that appellant sustained a left knee strain and later authorized surgery on his left knee.

On October 30, 1998 Dr. Mitchell Z. Pollak, a Board-certified orthopedic surgeon, performed surgery on appellant's left knee. In a report of that date, he stated:

“Findings included an old tear of the anterior cruciate ligament, complete tear of the posterior horn of the medial meniscus, degenerative arthrosis of the medial femoral condyle and medial tibial plateau with osteophyte formation noted on the intercondylar aspect of the lateral tibial plateau, as well as the anteromedial aspect of the medial tibial plateau. He underwent debridement of the posterior horn meniscus tear, chondroplasty and abrasion arthroplasty of the medial femoral condyle.”

By decision dated August 8, 2000, the Office found that appellant had no loss of wage-earning capacity based upon his return to work as a modified city carrier technician.

On April 13, 2001 appellant filed a claim for a schedule award.

In response to an Office request for a report describing appellant's permanent impairment of the leg, Dr. Pollak stated, in a July 12, 2001 report, that appellant had a full range of knee motion, a “chronic tear of the anterior cruciate ligament [ACL] with minimal instability,” a tear

of the medial meniscus that was repaired arthroscopically, mild arthritis in the knee joint and at times a minimal degree of discomfort.

On February 15, 2002 appellant again filed a claim for a schedule award.

On March 27, 2002 the Office referred appellant to Dr. John Corbett, a Board-certified orthopedic surgeon, for an evaluation of the permanent impairment of his left leg. In a report dated April 23, 2002, he stated that appellant had a full extension of the knee, flexion to 130 degrees, no crepitation or effusion and equal circumferences of both legs at the thigh, calf and knee. Dr. Corbett stated, "I was not able to elicit any instability of the knee" and diagnosed "[p]ossible strain of the ACL, left knee, with some instability but with no objective physical findings at the time of my examination." Referring to Table 17-33 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr. Corbett recommended a one percent impairment for a partial medial meniscectomy.

In an addendum dated April 25, 2002, Dr. Corbett stated: "[w]ith reference to the [A.M.A.] *Guides*, Table 17-33, page 546, in addition to the one percent impairment for the medial or lateral meniscectomy, partial, there is a seven percent impairment for cruciate ligament laxity moderate."

On an Office schedule award work sheet dated May 16, 2002 an Office medical adviser indicated that appellant had a two percent impairment of the left knee due to a partial medial meniscectomy.

On May 31, 2002 the Office issued appellant a schedule award for a two percent permanent loss of use of the left leg.

The Board finds that the case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. 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.

The Office awarded a two percent permanent loss of use of appellant's left leg for his partial medial meniscectomy, the percentage set forth in Table 17-33 of the fifth edition of the A.M.A., *Guides*. This table also assigns percentages of impairment for mild, moderate and severe cruciate or collateral ligament laxity. In his addendum dated April 25, 2002, Dr. Corbett stated that appellant had, in addition to the impairment for the meniscectomy, a seven percent

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

impairment for moderate cruciate ligament laxity. This is consistent with the diagnosis in his April 23, 2002 report of a possible strain of the anterior cruciate ligament with some instability,³ but inconsistent with Dr. Corbett's statement in this report that he "was not able to elicit any instability of the knee." The Office should request that Dr. Corbett provide a reasoned opinion on any permanent impairment due to cruciate ligament laxity. The Office should then issue an appropriate decision on the permanent impairment of appellant's left leg.

The May 31, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
November 7, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ Dr. Pollak, in a July 12, 2001 report, indicated that appellant had a chronic tear of the ACL "with minimal instability."