

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY CAMPBELL and U.S. POSTAL SERVICE
POST OFFICE, Oklahoma City, OK

*Docket No. 02-1099; Submitted on the Record;
Issued October 16, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs correctly calculated appellant's rate of compensation in determining his schedule award amount.

On appeal appellant does not dispute the percentage of permanent impairment found in the Office's February 7, 2002 decision. He argues instead that the Office improperly calculated the dollar amount of his schedule award.

On March 12, 1996 appellant, then a 36-year-old letter carrier, was carrying mail when he stepped into a hole and twisted his left knee. The Office accepted the claim on April 22, 1996 for left knee strain.¹

Appellant returned to light duty on September 6, 1996 and full duty on November 5, 1996.²

On October 14, 1999 appellant received a schedule award of 25 percent to the left lower extremity for the period July 23, 1999 to December 7, 2000, for a total of 72 weeks of compensation.³

¹ The record reflects that appellant subsequently sustained injury to his right knee as a result of overcompensating. The Office accepted the claim for aggravation of arthritis of the right knee on September 1, 1999. The Office combined the two claims on September 27, 1999.

² In an undated interoffice memorandum, the Office indicated that appellant returned to limited duty on August 14, 1996 and full duty on November 5, 1997. However, this appears to be a typographical error as the return to work date was November 5, 1996.

³ The record reflects that appellant requested a lump-sum payment.

By decision dated November 15, 1999, the Office determined that the position of modified letter carrier fairly and reasonably represented his wage-earning capacity.

On September 19, 2000 Dr. John W. Ellis, a Board-certified family practitioner, provided impairment rating for both of appellant's knees. With respect to his right knee, he opined that appellant should receive a 19 percent permanent impairment of the right knee.

The Office medical adviser concurred that appellant was entitled to an additional 19 percent to the right lower extremity.

On February 7, 2002 the Office granted appellant a schedule award for a 19 percent permanent impairment for loss of use of his right lower extremity for the period September 19, 2000 to October 7, 2001, for a total of 54.72 weeks of compensation.

The Board finds that the Office improperly calculated appellant's rate of compensation in determining his schedule award amount.

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of schedule 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*, has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In the instant case, the Office medical adviser correctly applied the A.M.A., *Guides* (5th ed. 2001) in determining that appellant has no more than a 19 percent permanent impairment for loss of use of his right leg for which he has received a schedule award from the Office.

The Office determined that appellant had a 19 percent permanent impairment of his right lower extremity by adopting the findings of the Office medical adviser, who determined the precise impairment rating by taking Dr. Ellis' calculations based on right knee internal derangement, patella crepitus and loss of range of motion, a partial medial meniscal tear and surgery, medial and lateral collateral ligament laxity of the right ankle. The Office medical adviser then applied these findings to the applicable tables of the A.M.A., *Guides* and added them together to arrive at the total percentage of impairment in appellant's right leg based on the applicable figures and tables of the A.M.A., *Guides*.

The Board finds, however, that the Office's decision contains an error in stating the dollar amount of entitlement. The award entitled to appellant 54.72 weeks of compensation multiplied by a weekly compensation rate of \$531.86, which totals \$29,103.38. However, the

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

record reflects that the Office calculated the total amount due to appellant to be only \$25,869.97. The Office did not indicate that any deductions were made nor did it make a determination on dependents or otherwise explain how this final total figure was calculated. In the absence of any sort of rationale explaining this discrepancy, the Board finds that the Office incorrectly applied the figures in appellant's schedule award and that the total amount due must be resolved by the Office.

The decision of the Office of Workers' Compensation Programs dated February 7, 2002 is affirmed in part regarding the extent of appellant's permanent impairment, but is set aside and remanded to the Office for recalculation of the amount of the award.

Dated, Washington, DC
October 16, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member