U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD A. CATILLO and DEPARTMENT OF THE TREASURY, CUSTOMS SERVICES, Laredo, TX

Docket No. 02-1180; Submitted on the Record;
Issued October 29, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established entitlement to a schedule award greater than a two percent impairment of the right lower extremity.

On December 12, 2000 appellant, then a 42-year-old customs inspector, injured his knee when a student landed on his right knee while conducting a training exercise. In support of his claim, appellant submitted the results of a magnetic resonance imaging (MRI) scan showing a tear of the posterior horn of the medial meniscus.

In a January 11, 2001 decision, the Office accepted appellant's claim for right medial meniscus tear and authorized surgery.

Appellant returned to full duty on February 21, 2001.

In a May 3, 2001 report, Dr. Raul Marquez, an orthopedic surgeon, revealed that appellant had one percent permanent impairment of the whole person. He based his determination on a lower extremity range of motion test that revealed appellant had a right knee flexion of 120 degrees and flexion contracture of 0 degrees and a very tender joint line. Based on page 546, Table 17-33 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* fifth edition.

In a May 31, 2001 letter, appellant filed a CA-7, requesting a schedule award.

On July 26, 2001 the Office referred Dr. Marquez report to the district medical adviser along with a statement of accepted facts.

In a July 27, 2001 letter, the district medical adviser found appellant's date of maximum medical improvement was May 3, 2001 and using page 546, Table 17-33 of the fifth edition of the A.M.A., *Guides*, he found a 2 percent permanent impairment of the right lower extremity.

In a September 27, 2001 decision, the Office issued appellant an award for compensation based on two percent permanent impairment of the right lower extremity.[1]

The Board finds that appellant is not entitled to more than a two percent schedule award.

An employee seeking compensation under the Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[3] including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[4]

The schedule award provision of the Act[5] and its implementing regulation[6] 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.[7]

Neither Dr. Marquez nor the district medical adviser provided impairment ratings that exceeded two percent and appellant has not submitted medical evidence conforming to the A.M.A., *Guides* that supports his contention that he has a greater than two percent permanent impairment. As the report of the district medical adviser is in conformance with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[8]

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[1] In a letter dated October 15, 2001 and postmarked October 29, 2001, addressed to the claims examiners, appellant requested 'review and reconsideration." Appellant also noted that "your office has failed to provide me a copy of the district medical adviser's calculation." In a January 11, 2002 decision, the Office denied appellant's request for a review of the record finding his request was mailed more than 30 days after the date of the decision and, therefore, appellant had forfeited his right to a review of the written record. The record does not include the envelope in which this letter was mailed. The letter constitutes a request for reconsideration, which has not been addressed by the Office.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999).

[7] *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

[8] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

The decision of the Office of Workers' Compensation Programs dated September 27, 2001 is hereby affirmed.

Dated, Washington, DC
October 29, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member