

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SYLVESTER MALDEN and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 02-2017; Submitted on the Record;
Issued April 9, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained more than a 51 percent permanent impairment to his right lower extremity and more than a 57 percent permanent impairment to his left lower extremity for which he received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for right knee strain, right meniscal tear with partial meniscectomy and chondromalacia of the patella with quadriceps insufficiency, left greater than right and authorized a patellectomy on the left knee in 1976 and surgery on the right knee in 1982. On September 27, 1983 the Office issued appellant an award for a 36 percent permanent impairment to the left leg from January 9 through May 7, 1979, December 1, 1981 through May 12, 1982 and from August 2 through October 19, 1982. On September 26, 1984 the Office issued appellant a schedule award for a 10 percent permanent loss of use of the right leg from July 12 through September 29, 1984. On December 6, 1989 the Office issued appellant an additional award of 13 percent for permanent loss of use of the right leg from February 8 through October 27, 1988 and on December 19, 1989 the Office issued appellant an additional 6 percent award for loss of use of his left leg from February 8 through June 7, 1988. Thus, the Office issued appellant a total schedule award of 42 percent for the left leg and 23 percent for the right leg.

By letter dated August 28, 2000, appellant informed the Office that his treating physician, Dr. T. Joseph Dennie, a Board-certified orthopedic surgeon, performed a total left knee arthroplasty on him on July 11, 2000. He requested an adjustment of his disability impairment rating and a recalculation of his benefits. By letter dated December 29, 2000, the Office asked Dr. Dennie to assess appellant's impairment due to his left lower extremity using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994).

By letter dated July 13, 2001, Dr. Dennie stated that he performed a total knee arthroplasty on appellant to treat the arthritis in his left knee and that appellant reached maximum medical improvement on January 15, 2001. He stated that applying the A.M.A.,

Guides (3^d ed. 1994), appellant had a 30 percent impairment rating to the lower extremity as a result of the knee replacement surgery.

In a report dated January 4, 2002, the Office medical adviser, Dr. Michael L. DiDonna, noted that, based on Dr. Dennie's notes in his July 13, 2001 report, appellant's symptoms were well controlled since the left total knee replacement, there was no mention of pain in either lower extremity and no physical examination findings were reported. Dr. DiDonna stated that more information was needed before he could assess an impairment. He stated that, pursuant to the A.M.A., *Guides* (5th ed. 2001), the range of permanent impairment of the lower extremity varied from 37 to 75 percent based on the results of the total knee arthroplasty and that the information was derived using Table 17-35, page 549. Dr. DiDonna stated that Table 17-35 utilized criteria of severity of pain, specific range of motion measurements of the knee, stability, presence or absence of contracture or extension lag and alignment. He stated that he required similar information for the right knee including the presence or absence of atrophy, strength, sensation, deformity and the presence or absence of pain.

In a report dated February 18, 2002, Dr. Dennie applied the A.M.A., *Guides* (5th ed. 2001), Table 17-35, page 549 and determined that appellant had 45 points for mild or occasional pain, 24 points for range of motion, 5 points for anterior-posterior instability and 15 points for medial-lateral instability. He stated those numbers converted to a 15 percent impairment rating for appellant's total knee replacement. Dr. Dennie noted that appellant had a total patellectomy on his left leg, stated that he was unsure whether that had been factored in and he added it to obtain a total impairment of 24 percent to the whole person for the left total knee arthroplasty.

Addressing appellant's right knee, Dr. Dennie stated that, since 1997 when he had complete collapse of the medial compartment with osteophyte formation in the lateral and patellofemoral compartments, appellant did not have additional x-rays. He stated that appellant had varus deformity to the knee, laxity to valgus stress testing consistent with the deformity, a five degree knee flexion contracture and tenderness mainly along the medial tibiofemoral joint line. Dr. Dennie stated that appellant was anticipating needing a total knee arthroplasty on the right knee but since the one on the left had been performed, his was a little less symptomatic on the right. He estimated that the impairment rating on the right knee would be 15 to 20 percent using Table 17-35, page 549.

In a report dated March 8, 2002, Dr. DiDonna considered Dr. Dennie's findings in his February 18, 2002 report and stated that under Table 17-35, page 549 and Table 17-33, page 546, appellant had a 37 percent permanent impairment of the left lower extremity based on a "good result" (89 points) of the left total knee arthroplasty. He found that under Table 17-33, page 546, appellant had a 22 percent permanent impairment of the left lower extremity based on a patellectomy of the left knee. Dr. DiDonna concluded that appellant had a total permanent impairment of 57 percent to the left lower extremity.

Regarding the right knee, Dr. DiDonna stated that applying Table 17-33, page 546, appellant had a 2 percent permanent impairment based on a medial meniscectomy and applying Table 17-31, page 544, that appellant had a 50 percent permanent impairment of the right knee based on a cartilage interval of "0 mm," as seen on the radiograph of the right knee. Using the

Combined Values Chart, page 604, he determined that appellant's total permanent impairment of the right lower extremity was 51 percent.

On June 24, 2002 the Office issued appellant a schedule award of an additional 28 percent permanent impairment to the right lower extremity, with 23 percent previously paid or a total impairment of 51 percent and an additional 15 percent permanent impairment to the left lower extremity, with 42 percent previously paid or a total impairment of 57 percent.

The Board finds that appellant did not sustain more than a 51 percent permanent impairment to his right lower extremity and more than a 57 percent impairment to his left lower extremity for which he received a schedule award.

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.³

In his February 18, 2002 report, Dr. Dennie applied the A.M.A., *Guides* (5th ed. 2001), Table 17-13, page 549 and determined that appellant had a total of 89 points for pain, range of motion, anterior-posterior instability and medial lateral instability which converted to a 15 percent impairment rating for appellant's total knee replacement. He stated that appellant had a total impairment to the whole person of 24 percent for the left total knee arthroplasty. Applying Table 17-35, page 549, Dr. Dennie estimated that appellant had a 15 to 20 percent impairment rating to his right knee. He based his estimate on varus deformity to the knee, laxity to valgus stress testing consistent with deformity, a five percent degree knee flexion contracture, tenderness along the medial tibiofemoral joint line and the anticipated need for a total knee arthroplasty.

Applying Table 17-35, page 549 and Table 17-33, page 546, the district medical adviser, Dr. DiDonna, determined that the 89 points identified by Dr. Dennie equaled a 37 percent permanent impairment to the left lower extremity and appellant. Applying Table 17-33, page 546, he found that appellant had a 22 percent permanent impairment of the left lower extremity based on a patellectomy of the left knee. He concluded that appellant's total permanent impairment to his left knee was 57 percent.⁴ For the right knee, applying Table 17-33, page 546, he determined that appellant had a 2 percent permanent impairment based on a medial

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.404.

³ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 306, 308 (1986).

⁴ It is not precisely clear how Dr. DiDonna obtained 57 percent. Using the Combined Values Chart, page 604, the correct degree of impairment using the 37 and 22 percentages is 51 percent.

meniscectomy and applying Table 17-31, page 544, that appellant had a 50 percent permanent impairment of the right knee. Using the Combined Values Chart, page 604, he determined that appellant's total permanent impairment of the right lower extremity was 51 percent. Dr. DiDonna's use of the A.M.A., *Guides* (5th ed. 2001) in assessing the degree of appellant's impairments to his right and left knees and his rating assessments were sufficiently proper to constitute the weight of the evidence.⁵

The June 24, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁶

Dated, Washington, DC
April 9, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ Dr. Dennie's determination that appellant had a 24 percent impairment to the whole person for the left total knee arthroplasty is not relevant in calculating the degree of appellant's impairment because a whole person rating is not accepted under the Act; *see Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

⁶ On appeal, appellant contended that he did not receive 42 percent for his leg and 23 percent for the right leg from the prior awards but received 36 percent for his left leg and 12 percent for his right leg. The Office should ascertain that appellant is paid the full amount of the award to which he is entitled.