

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH J. HAMBY and U.S. POSTAL SERVICE,
BRITTON STATION, Oklahoma City, OK

*Docket No. 03-2079; Submitted on the Record;
Issued December 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant is entitled to more than a 37 percent permanent impairment for his right lower extremity for which he received a schedule award.

On March 2, 2001 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim alleging that on that date he stepped out of his long life postal vehicle and strained his right knee.¹ By letter dated April 16, 2001, the Office of Workers' Compensation Programs accepted appellant's claim for a strained right knee. On April 23, 2001 he underwent arthroscopic examination and chondroplasty.

On March 5, 2002 appellant filed a claim for an additional schedule award.

In an October 30, 2001 letter, Dr. Robert M. Lambert, a Board-certified orthopedic surgeon and appellant's treating physician, stated that appellant had a 20 percent impairment of the right lower extremity due to the March 2, 2001 employment injury which resulted in chondroplasties of the articular cartilage in the groove, the patella and the medial femoral condyle. Dr. Lambert stated that this impairment rating was in addition to a 39 percent permanent impairment rating previously provided in April 1994.

In his March 11, 2002 letter, Dr. Lambert stated that appellant continued to have pain with climbing, squatting and stooping. He noted that appellant was unable to walk long distances and could not perform his duties as a letter carrier. Dr. Lambert found that appellant had reached maximum medical improvement and opined that, in addition to the 20 percent additional permanent impairment for which appellant was rated on October 30, 2001, he had an additional 10 percent permanent impairment. Dr. Lambert concluded that appellant had a total permanent impairment of 69 percent of the right lower extremity. He did not address how he

¹ The record reflects that appellant previously sustained injury to his right knee, including arthroscopic surgery in 1986 and 1993, and reconstruction of the anterior cruciate ligament in 1994. Appellant received a schedule award for a 37 percent impairment of the right lower extremity.

arrived at this impairment estimate applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. By letter dated April 18, 2002, the Office requested Dr. Lambert to provide an impairment rating applying the fifth edition of the A.M.A., *Guides*.

In an April 30, 2002 letter, Dr. Lambert found that appellant had an additional 30 percent impairment due to a 2 millimeter loss of cartilage interval of the tibiofemoral joint. He reiterated that appellant had pain with climbing, squatting and stooping and that appellant was unable to walk long distances.

On July 28, 2002 Dr. R. Meador, an Office medical adviser, reviewed the case record and stated that Dr. Lambert failed to explain how he determined that appellant had a total of a 69 percent impairment of the right lower extremity, which was not in accord with the fifth edition of the A.M.A., *Guides*. He noted that Table 17-31, page 544 provided that a joint space of the knee of 2 millimeters represented 20 percent impairment. Dr. Meador recommended a further report complying with the A.M.A., *Guides*.

By letter dated August 26, 2002, the Office advised Dr. Lambert to review Dr. Meador's report. In a September 6, 2002 response letter, Dr. Lambert explained that appellant had a 20 percent permanent impairment due to the loss of 2 millimeters of the tibial femoral joint based on the A.M.A., *Guide* values. He combined this rating with appellant's previous rating of 39 percent impairment in 1994 to determine that appellant had a 59 percent permanent impairment. Dr. Lambert stated that appellant had an additional 10 percent for continued pain and inability to stoop, squat repeatedly or climb. Dr. Lambert found a total of 69 percent impairment.

On November 29, 2002 Dr. Meador reviewed Dr. Lambert's September 6, 2002 letter and again found that appellant had a 20 percent permanent impairment of the right lower extremity under Table 17-31 for loss of cartilage space. Dr. Meador noted that Dr. Lambert's estimate of 69 percent impairment did not conform with the A.M.A., *Guides* as the 10 percent allowed for pain due to an inability to stoop, squat or climb was not based on the A.M.A., *Guides*. Further, Dr. Lambert added the additional impairment components to arrive at the 69 percent rating.

On December 5, 2002 Dr. Ronald H. Blum, an Office medical adviser, determined that appellant reached maximum medical improvement on March 5, 2002. Utilizing Table 17-31, page 544 of the A.M.A., *Guides*, Dr. Blum determined that the 2 millimeter loss of cartilage of the knee constituted 20 percent impairment. He noted that Dr. Lambert did not provide a formal pain evaluation under Chapter 18, page 573 of the A.M.A., *Guides*. The Office medical adviser stated that section 18.3d, page 573 provided that, if pain increases the burden of the condition, then up to 3 percent impairment of the involved part may be added. Dr. Blum determined that under section 18.3d appellant was entitled to 3 percent impairment for pain. Utilizing the Combined Values Chart, page 604, the Office medical adviser combined the 3 percent impairment rating for pain with the 20 percent impairment rating for the cartilage loss to find a total 22 percent permanent impairment of the right lower extremity.

By decision dated January 13, 2003, the Office found that appellant had no more than a 37 percent permanent impairment of the right lower extremity, for which he previously received a schedule award.²

The Board finds that appellant is not entitled to more than a 37 percent permanent impairment for his right lower extremity, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁵ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁶

In this case, Dr. Blum relied on the findings of Dr. Lambert to determine that appellant did not have more than a 37 percent permanent impairment of the right lower extremity. The Office medical adviser properly calculated appellant's impairment of the right lower extremity pursuant to the tables of the fifth edition of the A.M.A., *Guides*. He found 20 percent impairment of the knee under Table 17-31 for a 2 millimeter loss of cartilage. Dr. Blum applied Chapter 18 of the A.M.A., *Guides* to allow an additional 3 percent for pain. When combined, this totaled a 22 percent impairment of the right lower extremity.

Dr. Lambert's permanent impairment evaluations did not conform with the A.M.A., *Guides*. While he allowed 10 percent for pain, Dr. Lambert did not discuss this rating or how he applied the A.M.A., *Guides* in making this estimate. Further, he did not explain the basis for adding the impairment estimate to the prior rating of 1994 or how this conformed with the protocols of the A.M.A., *Guides*. For this reason, his opinion is of diminished probative value. As appellant has no more than a 37 percent impairment of the right lower extremity for which he received a schedule award, the Office properly denied an additional schedule award.

² The Board notes that the record on appeal does not contain a copy of the Office decision granting appellant a schedule award for a 37 percent permanent impairment of the right lower extremity as noted by the Office in its January 13, 2003 decision.

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

⁴ 20 C.F.R. § 10.404.

⁵ 5 U.S.C. § 8107(c)(19).

⁶ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

The January 13, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 3, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member