

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA J. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, VA

*Docket No. 02-2217; Submitted on the Record;
Issued January 22, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has more than a nine percent permanent impairment to her right leg.

On August 30, 1999 appellant, then a 32-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on August 18, 1999 she sustained injury when she tripped on uneven pavement while in the performance of duty. The Office of Workers' Compensation Programs accepted that claim for a right knee sprain and torn right meniscus. Appellant underwent a lateral meniscectomy in January 2000. In September 2000, appellant underwent reconstruction surgery of the anterior cruciate ligament.

By decision dated June 4, 2002, the Office issued a schedule award for a nine percent permanent impairment of the right leg or 25.92 weeks of compensation.¹ In a decision dated August 23, 2002, the Office denied modification.

The Board finds that appellant has not established more than a nine percent permanent impairment to the right leg.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

¹ The decision does not state the actual percentage; 25.92 weeks is 9 percent of the maximum 288 weeks for permanent leg impairment. *See* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.³ As of February 1, 2001, the 5th edition of the A.M.A., *Guides* was to be used to calculate schedule awards.⁴

In a report dated September 29, 2001, an attending physician, Dr. Kenneth R. Zaslav, an orthopedic surgeon, indicated that appellant had reached maximum medical improvement with respect to her knee injury. He noted that appellant had an anterior cruciate ligament reconstruction; he reported that appellant had persistent pain in her patellar region and would always have some mild difficulty with hills and running. Dr. Zaslav opined that appellant had a 13 percent impairment according to the A.M.A., *Guides*.

On appeal, appellant states that she does not understand why the Office failed to issue a schedule award for a 13 percent impairment, in accord with Dr. Zaslav's opinion. The reason is that Dr. Zaslav did not provide any explanation as to how the 13 percent was calculated. Dr. Zaslav does not identify any tables, figures or otherwise explain how he applied the A.M.A., *Guides* in determining that appellant had a 13 percent impairment.

On the other hand, an Office medical adviser did provide an opinion with reference to a specific table under the 5th edition of the A.M.A., *Guides*. In a report dated May 30, 2002, the medical adviser identified Table 17-33, which provides diagnosis-based estimates of leg impairments.⁵ Under Table 17-33, a partial lateral meniscectomy results in a two percent leg impairment. For mild cruciate ligament laxity, Table 17-33 provides a seven percent leg impairment. The medical adviser combined the impairments for a nine percent impairment to the right leg.

The Board finds that the Office medical adviser is the only opinion of record that provides a reasoned medical opinion as to the degree of permanent impairment to the right leg under the 5th edition of the A.M.A., *Guides*. Since Dr. Zaslav did not explain his opinion, it is of diminished probative value and is not sufficient to support an impairment greater than nine percent.

³ A. George Lampo, 45 ECAB 441 (1994).

⁴ FECA Bulletin No. 01-05 (January 29, 2001).

⁵ A.M.A., *Guides* at 546, Table 17-33.

The decisions of the Office of Workers' Compensation Programs dated August 23 and June 4, 2002 are affirmed.

Dated, Washington, DC
January 22, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member