

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JULIO A. PUGLIESE and U.S. POSTAL SERVICE,  
HAVERTOWN POST OFFICE, Havertown, PA

*Docket No. 03-817; Submitted on the Record;  
Issued July 22, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 19 percent permanent impairment of the right lower extremity for which he received schedule awards.

On November 9, 1993 appellant, then a 47-year-old letter carrier, filed a claim for a traumatic injury occurring on November 5, 1993 in the performance of duty. The Office of Workers' Compensation Programs accepted his claim for a right knee sprain, a dislocation with anterior cruciate ligament sprain, a torn anterior cruciate ligament, patellofemoral arthritis, a tear of the lateral meniscus and synovitis of the right knee. The Office authorized a 1993 arthroscopic debridement of the anterior cruciate ligament and medial patellofemoral retinaculum and a January 30, 2001 arthroscopy and partial lateral meniscectomy.

Following appellant's January 30, 2001 surgery, Dr. Don A. Kovalsky, a Board-certified orthopedic surgeon and his attending physician, found that appellant could resume work on May 7, 2001 with a restriction on letter carrying no more than one hour per day.

By letter dated May 1, 2001, the Office requested that Dr. Kovalsky evaluate appellant's degree of permanent impairment of the right leg according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed 2001). In a report dated May 25, 2001, he found that appellant had right knee flexion of 120 to 125 degrees and extension to negative 5 degrees. Dr. Kovalsky noted that appellant required medication for pain. An Office medical adviser reviewed Dr. Kovalsky's report on July 6, 2001 and noted that appellant had no impairment due to loss of range of motion according to Table 17-10 on page 537 of the A.M.A., *Guides*. He further found that, according to Table 17-33 on page 546, appellant had a 2 percent impairment due to his partial medial meniscectomy. The Office medical adviser concluded that appellant had a two percent impairment of the right leg.

By decision dated July 16, 2001, the Office granted appellant a schedule award for a two percent permanent impairment of the right leg. The period of the award ran for 5.76 weeks from May 11 to June 20, 2001.

Dr. Kovalsky, in a letter to the Office dated August 3, 2001, noted his referral of appellant to Dr. George L. Rodriguez, a Board-certified physiatrist, for an impairment evaluation.

On August 6, 2001 appellant requested a hearing on his claim. He submitted a report dated September 19, 2001 from Dr. Rodriguez, who diagnosed a partial anterior cruciate ligament tear, medial and lateral meniscus tears, femoral and patellar chondromalacia and gait abnormality. He noted that appellant was status post partial lateral and medial meniscectomies, thermal shrinkage and thermal chondroplasty of the femoral condyle and patella. He listed findings of a full range of motion with lateral collateral ligament laxity and anterior laxity. Dr. Rodriguez related:

“I have reviewed the operative report for the arthroscopic debridement of the anterior cruciate ligament and medial patellofemoral retinaculum performed by Dr. Kovalsky on December 6, 1993, as well as the arthroscopic partial lateral meniscectomy, thermal shrink of the anterior cruciate ligament, thermal chondroplasty of the lateral femoral condyle and patella and partial synovectomy performed by Dr. Kovalsky on January 30, 2001.”

Dr. Rodriguez found that, according to Table 17-33 on page 546 of the A.M.A., *Guides*, appellant had a 25 percent lower extremity impairment due to moderate anterior cruciate and collateral ligament laxity and a 10 percent impairment due to a partial medial and lateral meniscectomy. He noted that appellant had no impairment due to moderate patella chondromalacia and moderate gait abnormality. Dr. Rodriguez combined his impairment findings of 25 and 10 percent and concluded that appellant had a 33 percent impairment of the lower extremity.

On November 15, 2001 appellant, through his representative, requested a review of the written record in lieu of a hearing. On February 15, 2002 an Office medical adviser reviewed Dr. Rodriguez’s report and stated:

“In his report, Dr. Rodriguez based his PPI [permanent partial impairment] award on partial medial and lateral meniscectomy of the right knee. However, [a] medial meniscectomy, done in 1993, has not been included as the current work[-]related condition. Thus, the 2 [percent] PPI of the right lower extremity should be based on the partial lateral meniscectomy ([T]able 17-33, page 546).

“Dr. Rodriguez also rates the right knee based on the cruciate and collateral ligament instability. However, evaluations by other medical examiners do not reveal current collateral ligament instability. The more appropriate PPI would be based on the moderate cruciate ligament instability (17 percent PPI, [T]able 17-33, page 546). Combing the above values (2+17) [appellant] warrants 19 percent PPI to his right lower extremity.”<sup>1</sup>

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<sup>1</sup> In a report dated January 25, 2001, Dr. Kovalsky opined that appellant “should stay on his current restrictions at work indefinitely.”

By decision dated April 8, 2002, the hearing representative vacated the Office's July 16, 2001 decision and remanded the case to the Office to issue a schedule award for an additional right lower extremity impairment of 17 percent. In a decision dated May 1, 2002, the Office issued appellant a schedule award for an additional 17 percent impairment of the right leg.

In a letter dated May 17, 2002, the employing establishment informed the Office that appellant was working full-time limited duty with restrictions on walking over one hour. By decision dated May 22, 2002, the Office found that appellant had no loss of wage-earning capacity based on its determination that his actual earnings as a full-time limited-duty letter carrier fairly and reasonably represented his wage-earning capacity.<sup>2</sup>

The Board finds that appellant has a 27 percent impairment of his right lower extremity.

The schedule award provisions of the Federal Employees' Compensation Act<sup>3</sup> and its implementing federal regulation,<sup>4</sup> 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>6</sup>

In this case, Dr. Rodriguez concluded that appellant had a 25 percent impairment due to moderate anterior cruciate and collateral ligament laxity and a 10 percent impairment due to medial and lateral meniscectomies. The Office medical adviser reviewed Dr. Rodriguez's report and opined that appellant had a two percent impairment due to his partial lateral meniscectomy<sup>7</sup> but no impairment due to his partial medial meniscectomy because it preexisted the current employment-related condition. The Board notes that it is well established that preexisting impairments of the body are to be included when determining the amount of a schedule award for an employment-related permanent impairment.<sup>8</sup> However, in this case, it does not appear from the record that appellant underwent a partial medial meniscectomy. In the November 1993 operative report, Dr. Kovalsky indicated that he had performed an arthroscopic debridement of the anterior cruciate ligament and medial patellofemoral retinaculum. In his description of the procedure, Dr. Kovalsky stated, "[t]he medial meniscus was probed in its entirety [and] noted to

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<sup>2</sup> Appellant has not appealed the Office's May 22, 2002 wage-earning capacity decision and, therefore, the decision is not before the Board.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> See FECA Bulletin No. 01-5 (issued January 29, 2001).

<sup>7</sup> A.M.A., *Guides* at 546, Table 17-33.

<sup>8</sup> *Walter R. Malena*, 46 ECAB 983 (1995).

be intact. Well visualized [was] the posterior horn which was also intact with no central or peripheral detachments.” Therefore, the record does not support that appellant underwent a medial meniscectomy in 1993 and, under the A.M.A., *Guides*, he is entitled only to a two percent impairment due to his partial lateral meniscectomy in January 2001.

The Office medical adviser further found that appellant was entitled to a 17 percent impairment due to moderate cruciate laxity rather than a 25 percent impairment due to moderate cruciate and collateral ligament laxity.<sup>9</sup> The Office medical adviser noted that current medical records did not document collateral ligament laxity but, instead noted laxity of the anterior cruciate ligament. However, the medical reports of record submitted by Dr. Kovalsky subsequent to appellant’s January 2001 surgery primarily addressed his degree of disability and progress following his surgery. In a report dated March 7, 2001, he reviewed appellant’s history of injury and treatment received. Dr. Kovalsky noted that appellant’s 1993 employment injury caused “a complete tear of the anterior cruciate ligament, sprain and tear of the medial collateral ligament and tear of the medial retinaculum and chondral injury to the medial facet of his patella.” He stated:

“The collateral ligament sprain and the medial retinacular tear healed, but due to the injury to the patella, which was damage to the articular cartilage and due to the chronic anterior cruciate ligament tear, [appellant] has a chronic condition regarding his right knee. The natural history of this problem is that there is going to be slow, gradual progression and degeneration of the injured cartilage along the medial facet of the patella resulting in patellofemoral arthritis. Also, due to the anterior cruciate ligament tear, he has increased rotatory instability of the knee, which predisposes him to gradually develop degenerative arthritis of the patellofemoral joint and the tibiofemoral joint and also predisposes him to have tears of the meniscus.”<sup>10</sup>

On August 3, 2001 Dr. Kovalsky referred appellant to Dr. Rodriguez for the purpose of providing an impairment rating. Dr. Rodriguez, after examining appellant, applied the tables and provisions of the A.M.A., *Guides* and found that appellant was entitled to a 25 percent impairment due to anterior cruciate laxity and collateral ligament laxity. The Office medical adviser did not provide adequate rationale in support of his finding that Dr. Rodriguez’s opinion was insufficient to establish that appellant had an impairment due to collateral ligament laxity. The Board, therefore, finds that appellant has a 25 percent impairment of the right lower extremity due to laxity of the anterior and collateral ligaments. Combining the 25 percent impairment rating due to laxity of the anterior and collateral ligaments with the 2 percent impairment due to appellant’s partial lateral meniscectomy, yields a 27 percent permanent impairment of the right lower extremity. The Board, therefore, finds that appellant has a 27 percent permanent impairment of the right lower extremity.

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<sup>9</sup> A.M.A., *Guides* at 546, Table 17-33.

<sup>10</sup> In office visit notes dated December 11, 2001 and January 25, 2002, Dr. Kovalsky treated appellant for a minor injury to his knee causing joint effusion but no ligamentous instability.

The decisions of the Office of Workers' Compensation Programs dated May 22 and May 1, 2002 are affirmed as modified.

Dated, Washington, DC  
July 22, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member