

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RAMON DIAZ and U.S. POSTAL SERVICE,  
POST OFFICE, Carrizo Springs, TX

*Docket No. 03-503; Submitted on the Record;  
Issued June 13, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has more than a two percent permanent impairment of the left knee for which he received a schedule award.

On October 22, 2001 appellant, then a 53-year-old letter carrier, filed a claim alleging that he developed a knee condition as a result of the walking required in his job. The Office of Workers' Compensation Programs accepted the claim for left medial meniscus tear and authorized arthroscopic surgery. Appellant was paid appropriate compensation. He did not stop work.

Appellant submitted several reports from Dr. Morris H. Lampert, a Board-certified neurologist, dated May 17 to 31, 2001; and an operative note dated January 30, 2002. Dr. Lampert noted a history of appellant's left knee injury indicating that he had been having discomfort for approximately six weeks. He noted that appellant had recurrent right knee pain in 1998 and in 1999 underwent surgery for a torn cartilage of the right knee which was performed by Dr. Gloria G. Box, an orthopedic surgeon. Dr. Lampert diagnosed appellant with probable tear of the meniscus of the left knee. In an operative report dated January 30, 2002, Dr. Box noted that appellant underwent a left knee arthroscopy with partial medial meniscectomy and joint debridement. She diagnosed appellant with left knee medial meniscus tear, medial compartment osteoarthritis, trochlear groove chondral defect and synovitis.

Thereafter, appellant submitted various medical records from Dr. Box dated February 7 to April 18, 2002; and an impairment report from Dr. Michael I. Zuflacht, an orthopedist, dated June 27, 2002. Dr. Box noted that appellant was improving post surgery, both in knee strength and ambulation. Dr. Zuflacht performed an impairment rating based on a referral from Dr. Box and noted that appellant reached maximum medical improvement on June 6, 2002. He noted range of motion of the left knee of 120 degrees in supine and prone position; no flexion or fasciculations of the quadriceps; and no limp or gait abnormalities. Dr. Zuflacht indicated that appellant was to receive no impairment rating for atrophy or gait disturbance because none was noted. He indicated that appellant had a partial left medial meniscectomy which is rated at a one

percent whole person impairment according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001) page 456.<sup>1</sup>

Thereafter, appellant filed a claim for a schedule award.

Dr. Zuflacht's report and the case record were referred to the Office medical adviser who determined in accordance with the A.M.A., *Guides* that appellant sustained a two percent impairment of the left lower extremity.

In a decision dated September 19, 2002, the Office granted appellant a schedule award for a two percent permanent impairment of the left lower extremity.

The Board finds that appellant has no more than a two percent impairment of the left lower extremity.

The schedule award provisions of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</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 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.

On appeal appellant alleges that he is entitled to greater than a two percent impairment of the left lower extremity because he sustained a similar injury to his right knee and obtained a higher impairment rating for that extremity.

In his report dated June 27, 2002, Dr. Zuflacht noted that appellant had reached maximum medical improvement with respect to his left knee on June 6, 2002. He noted normal range of motion of the left knee of 120 degrees in supine and prone position;<sup>4</sup> no flexion or fasciculation of the quadriceps; there was no limp disturbance;<sup>5</sup> and there was no gait abnormality.<sup>6</sup> Dr. Zuflacht indicated that appellant was to receive no impairment rating for atrophy<sup>7</sup> or gait disturbance<sup>8</sup> because none was noted. He indicated that appellant had a partial

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<sup>1</sup> The impairment rating for the knee appears on page 546 of the A.M.A., *Guides* opposed to page 456 as indicated by Dr. Zuflacht.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> See Figure 17-10, page 537 of the A.M.A., *Guides*.

<sup>5</sup> See Figure 17-4, page 528 of the A.M.A., *Guides*.

<sup>6</sup> See Figure 17-5, page 529 of the A.M.A., *Guides*.

<sup>7</sup> See Figure 17-6, page 530 of the A.M.A., *Guides*.

<sup>8</sup> See Figure 17-5, page 529 of the A.M.A., *Guides*.

left medial meniscectomy which was rated at a one percent whole person impairment or two percent permanent impairment of the lower extremity according to the A.M.A., *Guides*, page 546.

The Office medical adviser who reviewed Dr. Zuflacht's report correlated findings from his report to specific provisions in the A.M.A., *Guides*. The Office medical adviser noted that appellant sustained a partial medial meniscectomy which provided a two percent impairment rating according to Table 17-33, page 546 of the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>9</sup> Dr. Zuflacht provided no physical findings with his June 27, 2002 report which would demonstrate that appellant sustained an impairment rating higher than the two percent granted by the medical adviser.

The Board therefore finds that the Office medical adviser properly applied the A.M.A., *Guides* in finding that appellant had a two percent impairment of the left lower extremity due to his employment-related condition.

The Board therefore finds that the weight of the evidence rests with the calculations of the Office medical adviser. Appellant is therefore entitled to a schedule award for no more than a two percent impairment for the left lower extremity.<sup>10</sup>

The decision of the Office of Workers' Compensation Programs dated September 19, 2002 is hereby affirmed.

Dated, Washington, DC  
June 13, 2003

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>9</sup> Although the Office medical adviser noted that Dr. Zuflacht indicated that there was a history of medial compartment narrowing, he did not obtain the films to further evaluate that finding for an additional impairment percentage.

<sup>10</sup> With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This does not preclude appellant from requesting a reconsideration from the Office and submitting additional evidence in support of his claim.