

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY J. BUZZITTA and U.S. POSTAL SERVICE,
CFS UNIT, St. Louis, MO

*Docket No. 03-1577; Submitted on the Record;
Issued October 22, 2003*

DECISION and ORDER

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

The issue is whether appellant has more than a 30 percent impairment of the right lower extremity for which he received a schedule award.

On February 26, 2002 appellant, then a 55-year-old modified mark-up clerk, filed a claim, alleging that on that day he twisted his knee when he was struck in the back and leg by mail tubs. He stopped work on February 28, 2002 and returned on March 4, 2002.¹ By letter dated April 23, 2002, the Office of Workers' Compensation Programs accepted that appellant sustained an employment-related medial meniscal tear of the right knee. On April 26, 2002 he underwent diagnostic arthroscopy which revealed chondral defects of the medial femoral condyle and trochlear groove, but no tear. On August 15, 2002 appellant filed a claim for a schedule award. By letter dated September 9, 2002, the Office requested that appellant's treating Board-certified orthopedic surgeon, Dr. James B. Sola, evaluate appellant's knee impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).²

Dr. Sola provided a report, dated October 21, 2002, in which he noted appellant's complaints of pain and advised that maximum medical improvement had been reached. He further related that appellant had no restriction of motion and no significant findings other than tenderness over the scar. Dr. Sola concluded that he did not do impairment ratings.

¹ Appellant had previously sustained aggravation of impingement and tendinitis of the right shoulder, for which he had surgery and impingement of the left shoulder. In a decision dated November 7, 2001, he was granted a schedule award for a 15 percent permanent loss of use of the left arm and on November 8, 2001, he was granted a schedule award for a 13 percent permanent loss of use of the right arm. In a decision dated November 7, 2002, Docket No. 02-1069, the Board affirmed these decisions.

² A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

The Office thereafter referred appellant to Dr. Guy H. Frumson, a Board-certified orthopedic surgeon, for an impairment rating under the A.M.A., *Guides*. In a comprehensive report dated January 28, 2003, he noted appellant's medical history and findings on physical examination. Dr. Frumson advised that maximum medical improvement had been reached in October 2002 and that, under the fifth edition of the A.M.A., *Guides*, appellant was entitled to a 15 percent whole body impairment. An Office medical adviser noted the history of injury and arthroscopy and reviewed Dr. Frumson's January 28, 2003 report. He advised that maximum medical improvement had been reached on October 26, 2002, 10 months after appellant's surgery, and concluded that, under Table 17-10 of the A.M.A., *Guides*,³ appellant was entitled to a 20 percent permanent impairment for a 15 percent loss of extension and a 10 percent permanent impairment for loss of flexion, for a total of a 30 percent impairment of the right lower extremity.

In a decision dated April 2, 2003, appellant was granted a schedule award for a 30 percent impairment of the right lower extremity, for a total of 86.4 weeks of compensation, to run from October 26, 2002 to June 21, 2004. The instant appeal follows.

The Board finds that appellant has no more than a 30 percent impairment of the right lower extremity for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act⁴ and section 10.404 of the implementing federal regulation,⁵ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁶ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁷

The relevant medical evidence includes the January 28, 2003 report in which Dr. Frumson advised that maximum medical improvement had been reached in October 2002 and that appellant had an extensor lag of 15 degrees and flexed to 85 degrees. He then analyzed these range of motion impairments under Table 17.10 of the A.M.A., *Guides*, finding a 20

³ A.M.A., *Guides*, *supra* note 2 at 537.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ A.M.A., *Guides*, *supra* note 2.

⁷ See *Joseph Lawrence, Jr.*, *supra* note 2; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

percent impairment of the right lower extremity due to his flexion impairment and an additional 20 percent impairment due to flexion contracture.⁸ The Office medical adviser reviewed Dr. Frumson's report and advised that the maximum medical improvement had been reached on October 26, 2002. He concluded that under Table 17-10 of the A.M.A., *Guides*, appellant was entitled to a 20 permanent impairment for a 15 percent loss of extension and a 10 percent permanent impairment for loss of flexion, to total a 30 percent impairment of the right lower extremity.

The Board finds that the Office medical adviser properly rated appellant's permanent impairment. Table 17-10 of the A.M.A., *Guides* provides guidance for evaluating knee impairments and indicates that flexion of less than 110 degrees but more than 80 degrees is equal to a 10 percent lower extremity impairment.⁹ In the instant case, appellant flexed to 85 degrees, an impairment of 10 percent. The A.M.A., *Guides* further provides that a flexion contracture of 10 to 19 degrees is equal to a 20 percent lower extremity impairment.¹⁰ Here, appellant's flexion contracture equaled 15 degrees. Section 17.2f of the A.M.A., *Guides* provides that range of motion impairments are to be added.¹¹ Therefore, appellant's total impairment based on range of motion deficits equals 30 percent, for which he received a schedule award.

While Dr. Frumson concluded that appellant's range of motion deficits equaled a 40 percent lower extremity impairment, this is not supported by the A.M.A., *Guides*. He provided no other range of motion measurements that would indicate that appellant was entitled to a greater award. There is, therefore, no medical evidence establishing that appellant has greater than a 30 percent impairment of the right lower extremity, for which he received a schedule award.¹²

⁸ Dr. Frumson also noted physical findings of Grade IV strength, minimal right thigh atrophy and gait derangement but properly determined that, under Table 17.2 of the A.M.A., *Guides*, strength, gait and atrophy cannot be combined with range of motion findings in determining an impairment rating. A.M.A., *Guides*, *supra* note 2 at 526.

⁹ A.M.A., *Guides*, *supra* note 2 at 537.

¹⁰ *Id.*

¹¹ A.M.A., *Guides*, *supra* note 2 at 533.

¹² The Board notes that a claimant may seek an increased schedule award, however, if the evidence establishes that progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

The decision of the Office of Workers' Compensation Programs dated April 2, 2003 is hereby affirmed.

Dated, Washington, DC
October 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member