

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**ROSE A. BRAGG, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Detroit, MI, Employer**

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**Docket No. 04-361  
Issued: August 13, 2004**

*Appearances:*  
*Rose A. Bragg, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 25, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated November 26, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

**ISSUE**

The issue is whether appellant has more than a seven percent permanent impairment of the left lower extremity for which she received a schedule award.

**FACTUAL HISTORY**

On November 29, 1995 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim alleging that she injured her left knee on that date when she slipped on a piece of plastic and fell. The Office accepted appellant's claim for a left knee contusion, abrasion and sprain. The Office later accepted the condition of left knee chondrosis with arthroscopic surgery and debridement performed on July 18, 1996. Appellant subsequently filed a claim for a schedule award for permanent impairment of her left lower extremity.

By letter dated February 8, 2002, the Office asked Dr. Jeffrey D. Shapiro, appellant's attending Board-certified orthopedic surgeon, for an assessment of the permanent impairment of her left lower extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001).

In a May 29, 2002 report, Dr. Shapiro provided findings from his last examination of appellant on February 13, 2002 that included full range of motion of 0 to 140 degrees of flexion with no joint effusion. He noted that appellant complained of continued pain and giving way of the knee. Dr. Shapiro diagnosed post-traumatic osteoarthritis of the left knee and stated that appellant remained significantly restricted. On August 1, 2002 Dr. Shapiro stated that appellant continued to have intermittent medial sided left knee pain. Findings on examination included full extension and flexion to 130 degrees. He noted that she had severe medial joint line tenderness. Dr. Shapiro did not provide an opinion of appellant's percentage of impairment in his reports.

In an October 7, 2002 report, Dr. Norman L. Pollak, a Board-certified orthopedic surgeon and an Office referral physician, noted that appellant had pain after prolonged standing, walking and sitting and also with changes in weather and sometimes her knee would give way and lock. He noted that she had restrictions for standing, walking and lifting in her new position as a distribution clerk. Dr. Pollak provided findings on examination as follows:

“Stance and gait pattern were normal. [Appellant] was able to stand on toes and heels. She performed half of a squat complaining of left knee pain.

“In the seated and supine positions there was a full range of motion of the left knee. There was smooth patellar gliding. There was no apprehensive sign. There was no subpatellar crepitus. All ligaments were stable. There was minimal tenderness in the inferior pole of the patella and no other area. On testing quadriceps strength, there was initial good strength and then give-way phenomenon.

“Circumferential measurements revealed 1.75 cm [centimeters] differential. The left and right measured 10 cm proximal to the superior pole of the patella. Both knee joints had joint circumference of 35 cm.

“X-rays taken in AP [anterior-posterior] standing, lateral and tangential views were entirely normal. There was no loss of cartilage level.”

\* \* \*

“The only objective findings on today's examination are the give-way phenomenon in testing the left quadriceps and decreased circumference of the left thigh by 1.75 cm.”

\* \* \*

“As mentioned, the only residuals [sic] is a slight decreased circumference in the left thigh.”

In a supplemental report dated October 16, 2002, Dr. Pollak stated that appellant had a 7 percent impairment of the left lower extremity according to Table 17-6 at page 530 of the fifth edition of the A.M.A., *Guides* based on the thigh circumference differential of 1.75 cm.

On November 6, 2002 an Office medical adviser agreed with Dr. Pollak’s estimate that appellant had a 7 percent impairment of the left lower extremity based on a 1.75 cm atrophy of the left thigh according to Table 17-6 of the A.M.A., *Guides*. He stated that there was no other abnormality of the left knee noted, there was full range of motion and x-rays were normal with no cartilage interval narrowing.

By decision dated November 26, 2002, the Office granted appellant a schedule award for a 7 percent impairment of the left lower extremity, for 20.16 weeks of compensation for the period October 7, 2002 to February 25, 2003.<sup>1</sup>

### **LEGAL PRECEDENT**

The schedule award provision of the 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*<sup>4</sup> has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>5</sup>

### **ANALYSIS**

Before the A.M.A., *Guides* may be utilized, a description of appellant’s impairment must be obtained in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>6</sup> In this

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<sup>1</sup> Under the Federal Employees’ Compensation Act, the maximum award for impairment of a leg is 288 weeks of compensation. 5 U.S.C. § 8107(c)(2). A 7 percent impairment of the left leg would equal 20.16 weeks of compensation (288 weeks multiplied by 7 percent). The Board notes that this record contains additional evidence submitted subsequent to the Office decision of November 26, 2002. However, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB \_\_\_\_ (Docket No. 01-1361, issued February 4, 2002).

<sup>5</sup> *See supra* note 3.

<sup>6</sup> *Roel Santos*, 41 ECAB 1001 (1990).

case, Dr. Shapiro, appellant's attending physician, did not provide such a description of appellant's left lower extremity impairment or an opinion of the percentage of impairment based on the A.M.A., *Guides*. The Office obtained the necessary information from Dr. Pollak who determined that appellant had a seven percent impairment of the left lower extremity based on the fifth edition of the A.M.A., *Guides*. In his October 7, 2002 report, Dr. Pollak stated that the only objective findings on physical examination were the give-way phenomenon in testing the left quadriceps and decreased circumference of the left thigh by 1.75 cm. Dr. Pollak opined that the only residual from appellant's employment injury was the slight decreased circumference in the left thigh. In his October 16, 2002 report, Dr. Pollak stated that he had based his impairment rating on Table 17-6 of the fifth edition of the A.M.A., *Guides*, the table pertaining to impairment due to unilateral leg muscle atrophy.<sup>7</sup> Table 17-6 at page 530 of the A.M.A., *Guides* provides for a 3 to 8 percent impairment for a 1 to 1.9 cm difference in circumference. The Board finds that Dr. Pollak's determination that a 1.75 cm circumference difference equaled a 7 percent impairment of the left lower extremity is an appropriate interpretation and application of Table 17-6 of the A.M.A., *Guides*.

On November 6, 2002 the Office medical adviser concurred with Dr. Pollak's determination that appellant had a 7 percent impairment of the left lower extremity based on a 1.75 cm atrophy of the left thigh according to Table 17-6 of the A.M.A., *Guides*. He noted that there was no other abnormality of the left knee, there was full range of motion and x-rays were normal with no cartilage interval narrowing.

### **CONCLUSION**

The Board finds that the Office correctly based its determination that appellant had a seven percent impairment of the left lower extremity based on the October 7 and 16, 2002 reports of Dr. Pollack.

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<sup>7</sup> The Board notes that Dr. Pollak indicated in his October 7, 2002 report that appellant had pain and giving way of the knee (sensory deficit and motor deficit). The A.M.A., *Guides* provides that peripheral nerve injury (sensory or motor deficit) cannot be combined with atrophy in determining permanent impairment. "Atrophy ratings should not be combined with any of the other three possible ratings of diminished muscle function (gait derangement, muscle weakness, and peripheral nerve injury)." A.M.A., *Guides* 530. See also A.M.A., *Guides*, 526, Table 17-2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 26, 2002 is affirmed.

Issued: August 13, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member