

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

LEROY LARKINS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Washington, DC, Employer**

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**Docket No. 05-95
Issued: April 4, 2005**

Appearances:
Leroy Larkins, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 7, 2004 appellant filed a timely appeal from a September 8, 2004 schedule award decision of the Office of Workers' Compensation Programs which awarded an additional 5 percent impairment of the left lower extremity, for a total 37 percent. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he has more than a 37 percent impairment of the left lower extremity, for which he received schedule awards.

FACTUAL HISTORY

This case has been before the Board previously.¹ In a March 14, 2000 decision, the Board set aside Office decisions dated January 28, 1998 and March 19, 1997. The Board found

¹ On March 11, 1991 appellant, then a 48-year-old letter carrier, sustained an employment-related torn lateral

that a conflict in medical evidence had been created between Dr. Joseph T. Crowe and Dr. Kevin F. Hanley, appellant's attending physicians, and Dr. John B. Cohen,² who provided a second opinion evaluation for the Office, regarding the degree of impairment of his left lower extremity. The case was remanded to refer appellant to an appropriate medical specialist for an impartial evaluation.³ The law and facts as set forth in the previous Board decision are incorporated by reference.

On April 19, 2000 the Office referred appellant to Dr. Thomas F. Ryan, a Board-certified orthopedic surgeon, for an impartial evaluation and impairment rating. Dr. Ryan submitted reports dated May 15 and June 2, 2000, in which he advised that, under the fourth edition of the American Medical Association, *Guides to Permanent Impairment*, appellant had a 15 percent left lower extremity impairment. The Office referred the medical record, including Dr. Ryan's reports, to an Office medical adviser who, in a report dated June 10, 2000, opined that maximum medical improvement had been reached on June 2, 2000. He found that, based on Dr. Ryan's range of motion measurements, appellant had a total 32 percent impairment of the left lower extremity.

By decision dated June 14, 2000, the Office granted appellant a schedule award for an additional 30 percent impairment of the left lower extremity, for a total impairment of 32 percent.

Appellant continued under the care of Dr. Crowe and on July 3, 2001 filed a recurrence claim,⁴ stating that he needed total knee replacement surgery. On October 16, 2001 Dr. Crowe performed total knee arthroplasty that was authorized by the Office. Appellant was placed on the periodic rolls and returned to full duty on October 5, 2002.⁵ On October 30, 2002 he filed a claim for a schedule award.

In a report dated March 5, 2003, Dr. Crowe advised that appellant had done well postoperatively and had returned to delivering mail. He stated that appellant reported occasional aching in the knees but was overall quite happy with the functional result of the procedure. Dr. Crowe further noted that he had full extension and 115 degrees of flexion with no ligamentous laxity and excellent muscle bulk, tone and strength of the knee. He stated that appellant was able to ambulate without an antalgic component to his gait. Dr. Crowe advised that, under the fifth edition of the A.M.A., *Guides*, appellant was entitled to a 50 percent permanent impairment of the left lower extremity. He specifically referenced Tables 17-33 and 17-35 and found that appellant had a functional rating of 83 points which put him in the fair category, stating "[t]his evaluation also encompasses other factors from the State of Maryland, including residual pain, atrophy, loss of endurance, loss of function and weakness."

meniscus of the left knee, for which he underwent meniscectomies on October 1, 1991 and May 18, 1993.

² All physicians are Board-certified in orthopedic surgery.

³ Docket No. 98-1220 (issued March 14, 2000).

⁴ Appellant had transferred from the Anacostia Station, where he was initially injured to the Brentwood facility.

⁵ The record indicates that light duty had not been available at the employing establishment.

In a report dated August 5, 2004, an Office medical adviser noted his review of the medical records including the October 16, 2001 operative report and Dr. Crowe's March 5, 2003 report. He referenced the fifth edition of the A.M.A., *Guides* and determined that, under Tables 17-33 and 17-35, appellant's knee rating was greater than 90 points, which equaled a good result, for which he was entitled to a 37 percent impairment of left lower extremity. The Office medical adviser stated that maximum medical improvement had been reached on October 16, 2002, one year following the date of the total knee replacement surgery.

By decision dated September 8, 2004, the Office granted appellant a schedule award for an additional 5 percent impairment of the left lower extremity, a total of 37 percent. The award was for an additional 14.4 weeks of compensation, to run from October 16, 2002 to January 24, 2003.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁶ and its implementing regulation⁷ sets 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. The Act, however, 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.⁸

ANALYSIS

The Board finds that appellant has no more than a 37 percent impairment of the left lower extremity. Section 17.2 of the fifth edition of the A.M.A., *Guides* points out that, diagnosis-based estimates may be used to evaluate lower extremity impairments caused by various surgical procedures, including joint replacements.⁹ Table 17-35 addresses knee replacement results and under parts a, b and c assesses points for pain, range of motion and stability, which are to be added, with deductions made, under parts d, e and f, for flexion contracture, extension lag and misalignment.¹⁰ The total points found under Table 17-35 are then to be applied to Table 17-33, which covers a variety of conditions affecting the lower extremity, including total knee replacement.¹¹ In this case, both Dr. Crowe and the Office medical adviser utilized Tables 17-35 and 17-33.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 20 C.F.R. § 10.404.

⁸ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁹ A.M.A., *Guides*, *supra* note 8 at 525; *see Fritz A. Klein*, 53 ECAB 642 (2002).

¹⁰ A.M.A., *Guides*, *supra* note 8 at 549.

¹¹ *Id.* at 547.

Dr. Crowe concluded that appellant had a 50 percent, or fair impairment under Tables 17-35 and 17-33. His reported physical findings, however, do not support this conclusion. Under Table 17-35 his report of occasional pain equals 45 points and 115 degrees of flexion equals 22 points.¹² Dr. Crowe found no instability which would equal 25 points. Thus, when adding 45 points for pain, 22 points for range of motion and 25 points for no instability under parts a, b and c of Table 17-35, a total of 92 points is reached.¹³ As Dr. Crowe also found no flexion contracture, extension lag or misalignment, there would be no deduction under parts d, e and f of Table 17-35.¹⁴ Table 17-33 provides that a total of 85 to 100 points under Table 17-35 is equal to a good result, or a 37 percent lower extremity impairment.¹⁵

The Office medical adviser found that appellant had a good result to his total knee replacement based on the only physical findings reported in Dr. Crowe's March 5, 2003 report, *i.e.*, occasional pain and 115 degrees of flexion. He then properly concluded that this indicated that under Table 17-35, appellant's knee rating was greater than 90 points which would provide a good result or a 37 percent impairment under Table 17-33.¹⁶ While Dr. Crowe also advised that his evaluation encompassed other factors from the State of Maryland, including residual pain, atrophy, loss of endurance, loss of function and weakness, the Board finds that this statement has no bearing for schedule award determinations under the Federal Employees' Compensation Act as the A.M.A., *Guides* have been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹⁷ Dr. Crowe did not relate any of these conclusory findings to specific figures or tables in the A.M.A., *Guides*. There is, therefore, nothing in his report that would entitle appellant to an impairment rating greater than the 37 percent total awarded.

The Office therefore properly determined, in its September 8, 2004 decision, that appellant was entitled to an additional 5 percent schedule award, in addition to the 32 percent previously awarded.

CONCLUSION

The Board finds that the Office properly found that appellant was entitled to a total 37 percent impairment of the left lower extremity, for which he received schedule awards.

¹² Table 17-35 indicates that one point is awarded for each five degrees. *Id.* at 549.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ A.M.A., *Guides*, *supra* note 8 at 547.

¹⁶ A.M.A., *Guides*, *supra* note 8 at 547, 549.

¹⁷ *Joseph Lawrence, Jr.*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 8, 2004 be affirmed.

Issued: April 4, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member