

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

BRICA L. PATRICK, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Winston Salem, NC, Employer**

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**Docket No. 04-2242
Issued: February 16, 2005**

Appearances:

Brica L. Patrick, pro se

Office of Solicitor, for the Director,

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On September 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated June 24, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant has more than a 10 percent impairment of his right lower extremity for which he received a schedule award.

FACTUAL HISTORY

On July 30, 2002 appellant, then a 42-year-old maintenance/labor custodian, filed a traumatic injury claim alleging that he sustained an injury to his right knee on July 29, 2002 in the performance of duty. He stopped work on July 30, 2002 and returned to light duty on August 9, 2002.

On September 13, 2002 the Office authorized physical therapy from September 13, 2002 to January 13, 2003. On November 6, 2002 the Office accepted appellant's claim for right knee strain and contusion. On November 12, 2002 the Office expanded the claim to include internal derangement of the right knee and authorized a right knee arthroscopy. The right knee arthroscopy was performed on December 11, 2002 by Dr. Thomas C. Spangler, a Board-certified orthopedic surgeon. Appellant received appropriate compensation benefits.

On January 14, 2003 appellant accepted a limited-duty position as a modified laborer/custodian.

In a July 7, 2003 report, Dr. Spangler advised that appellant was not able to return to his date-of-injury job and advised that he most likely would have permanent restrictions, but they would have to be determined by a functional capacity evaluation (FCE) at a later date. The physician opined that appellant had not yet reached maximum medical improvement.

On October 31, 2003 appellant underwent a physical work performance evaluation.

In a November 7, 2003 report, Dr. Spangler advised that appellant had a 15 percent impairment of the right leg.

On November 18, 2003 appellant filed a claim for a schedule award.

On December 11, 2003 an Office medical adviser reviewed Dr. Spangler's November 7, 2003 report and noted that he did not utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001), hereinafter A.M.A., *Guides*. He referred to Table 17-33 and opined that a diagnosis based estimate would allow two percent for a partial meniscectomy and that appellant had two percent impairment of the right lower extremity. Dr. Spangler opined that appellant was at maximum medical improvement on November 7, 2003.

By letter dated February 20, 2004, the Office requested that appellant's physician provide an impairment rating utilizing the A.M.A., *Guides*.

On March 22, 2004 the Office determined that appellant was employed in the position of a modified/laborer custodian, since January 13, 2003 and that the position fairly and reasonably represented his wage earning capacity.

In a March 9, 2004 report, Dr. Spangler advised that appellant was entitled to a 15 percent impairment of the right lower extremity. He determined that pursuant to the A.M.A., *Guides* 537, Table 17-10, he was entitled to 10 percent for mild flexion, contraction and mild loss of range of motion. The physician gave an additional impairment of five percent for appellant's pain. Dr. Spangler advised that he had average flexion and extension was 150 degrees and he had 125 degrees of flexion compared to 5 degrees of extension on the right and also had atrophy and weakness on the right compared to the left. He also noted that the arthroscopy documented cartilage lesions of the medial femoral condyle and patella with a loose flap of cartilage on the patella. Dr. Spangler further advised that recent x-rays showed medial

joint narrowing of the patella and femoral spurs with very poor patellar positions. The physician explained that laterally, tracking was two degrees due to muscle weakness. Dr. Spangler also advised that appellant's pain complaints were consistent and the "medial meniscal lesion was the least of his problems."

On June 3, 2004 the Office medical adviser reviewed Dr. Spangler's March 9, 2004 report and noted a 10 percent maximum impairment rating for a 5 degree loss of extension to the right knee pursuant to the A.M.A., *Guides* 537, Table 17-10. The Office medical adviser indicated that Dr. Spangler had provided an additional five percent to appellant for pain; however, he opined that this impairment estimate was not supported by the A.M.A., *Guides*. The Office medical adviser explained that impairments due to weakness, atrophy and pain could not be combined with the impairment for loss of range of motion pursuant to the A.M.A., *Guides* 526, Table 17-2. The Office medical adviser concluded that appellant had no more than a 10 percent impairment of the right lower extremity and reached maximum medical improvement on March 9, 2004.

On June 24, 2004 the Office granted appellant a schedule award for 10 percent impairment of the right lower extremity. The award covered a period of 28.80 weeks from March 9 to September 26, 2004.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use, of specified members, functions and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.³ The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

ANALYSIS

The relevant medical evidence includes Dr. Spangler's March 9, 2004 report in which he advised that maximum medical improvement had been reached on March 9, 2004 and that, pursuant to the A.M.A., *Guides* 537, Table 17-10, appellant was entitled to 10 percent for mild flexion contracture/retained extension of 5 degrees. He also noted appellant's arthroscopy showed cartilage lesions of the medial femoral condyle and patella with a loose flap of cartilage on the patella and advised that x-rays showed medial joint narrowing of the patella and femoral spurs with very poor patellar positions. Dr. Spangler explained that laterally, tracking was two degrees due to muscle weakness. The physician gave an additional impairment of 5 percent for

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8107.

³ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁴ 20 C.F.R. § 10.404.

appellant's weakness, atrophy or pain and opined that appellant had a total impairment of 15 percent of the right lower extremity. However, Dr. Spangler did not explain how, under the A.M.A., *Guides*, he arrived at the five percent figure.

In a report dated June 4, 2004, an Office medical adviser addressed Dr. Spangler's March 9, 2004 report and reviewed Table 17-10 of the fifth edition of the A.M.A., *Guides*. He concurred that appellant had a 10 percent right leg impairment under Table 17-10 for a 5 degree loss of extension. The medical adviser concluded that appellant had no more than a 10 percent permanent impairment of the right lower extremity due to decreased range of motion. He advised that, under the A.M.A., *Guides* 526, Table 17-2, diagnosis-based estimates, weakness and muscle atrophy were not to be combined to range of motion impairments. The Office medical adviser found no basis to support further impairment under the A.M.A., *Guides*.

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 contracture of 5 to 9 degrees is equal to a maximum of 10 percent lower extremity impairment.⁵ Furthermore, Table 17-2 of the A.M.A., *Guides* indicates that it is not appropriate to combine range of motion impairment with diagnosis-based estimates, atrophy and muscle strength. There is no medical evidence conforming with the A.M.A., *Guides* establishing that appellant has more than a 10 percent impairment of the right lower extremity, for which he received a schedule award.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained more than a 10 percent impairment of his right lower extremity, for which he received a schedule award.

⁵ A.M.A., *Guides* 537.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 24, 2004 is affirmed.

Issued: February 16, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member