

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

GERALD E. EDDY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Riverside, NJ, Employer**

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**Docket No. 05-112
Issued: May 23, 2005**

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 13, 2004 appellant, through counsel, filed a timely appeal of the decision of the Office of Workers' Compensation Programs dated July 13, 2004, which affirmed a schedule award for a 10 percent impairment of his right leg. Pursuant to 5 U.S.C. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUE

The issue is whether appellant has established that he is entitled to a more than 10 percent impairment of his right lower extremity.

FACTUAL HISTORY

On April 6, 1999 appellant, a 55-year-old letter carrier, filed a traumatic injury claim alleging that he injured his right knee on April 5, 1999 while delivering mail on his route. The

Office accepted the claim for right knee sprain and authorized arthroscopic surgery, which was performed on July 16, 1999. Appellant returned to full-duty work on September 9, 1999.¹

Appellant filed a claim for a schedule award dated June 6, 2000 and submitted a report dated April 20, 2000 by Dr. David Weiss, an osteopath. Using Table 64 at page 85 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), fourth edition, Dr. Weiss concluded that appellant had a 10 percent impairment of his right lower extremity due a medial and lateral meniscectomy. Dr. Weiss concluded that appellant reached maximum medical improvement on March 30, 2000.

Subsequently, the Office received an August 1, 2000 report by Dr. Weiss. He concluded, based upon further review of reports from Dr. Thomas J. O'Dowd, a treating Board-certified orthopedic surgeon, that appellant had a 21 percent impairment of the right lower extremity. The physician reported a "2.5 m[illi]m[eter] cartilage interval as noted by surgeon Dr. O'Dowd." Dr. Weiss concluded that appellant had a 10 percent impairment due to his right lateral/medial meniscectomy² and a 12 percent impairment for a 2.5 cartilage interval for right knee arthritis,³ resulting in a total 21 percent impairment of the right lower extremity.

In a report dated April 19, 2001, an Office medical adviser concluded that appellant had a 10 percent impairment of the right lower extremity due to loss of range of motion pursuant to Table 17-10, page 537 of the fifth edition of the A.M.A., *Guides*. He also noted that pursuant to the fifth edition, loss of range of motion impairment and arthritis could not be combined pursuant to Table 17-2, page 526.

In a decision dated May 17, 2001, the Office issued appellant a schedule award for a 10 percent impairment of the right lower extremity. The period of the award was July 6, 2000 to February 2, 2001, a total of 28.8 weeks.

Appellant, through counsel, requested an oral hearing before an Office hearing representative in a May 22, 2001 letter. A hearing was held on June 18, 2003 at which appellant was represented by counsel and provided testimony.

In a decision dated August 12, 2003, the Office hearing representative set aside the May 17, 2001 schedule award decision and remanded the case for clarification from the Office medical adviser. The Office hearing representative asked the Office medical adviser to further clarify why an impairment rating for arthritis and a diagnosis based assessment could not be combined.

In a report dated August 25, 2003, the Office medical adviser, using the fifth edition of the A.M.A., *Guides*, concluded that appellant had a 10 percent impairment of his right lower extremity page upon Table 17-33, page 546 due to his partial meniscectomy. With regards to

¹ Appellant retired from the employing establishment effective March 1, 2000.

² A.M.A., *Guides* at Table 64, page 85.

³ *Id.* at Table 62, page 83.

Dr. Weiss' determination that appellant was also entitled to a 12 percent impairment rating for arthritis, the Office medical adviser stated that the record contained no supporting diagnostic x-rays to support this determination, as required by section 17.2h, page 544.

In a decision dated September 10, 2003, the Office denied appellant's request for an greater schedule award than the 10 percent previously awarded.

In a letter dated September 17, 2003, appellant, through counsel, requested a hearing. A hearing was held on June 18, 2003 at which appellant was represented by counsel and provided testimony.

In a decision dated July 13, 2004, the Office hearing representative found the evidence insufficient to establish more than a 10 percent impairment of the right knee. He determined the weight of the evidence rested with the report of the Office medical adviser. The Office hearing representative also found that opinion of Dr. Weiss was insufficient to create a conflict with the opinion of the Office medical adviser as the record contained no x-ray evidence supporting his cartilage interval finding.⁴

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulation⁶ 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. 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.⁷ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

⁴ FECA Bulletin No. 01-05 (issued January 29, 2001) provides that the "[a]ll [c]laims [e]xaminers and [h]earing [r]epresentatives should begin using the fifth edition of the A.M.A., *Guides* effective February 1, 2001." The Office noted that awards calculated upon the fourth edition of the A.M.A., *Guides* "should be evaluated according to the edition originally used." As the appellant's schedule award was not calculated until May 17, 2001, the Office medical adviser correctly used the fifth edition of the A.M.A., *Guides*. The Bulletin instructs that effective February 1, 2001, the fifth edition of the A.M.A., *Guides*, is to be used for "[a]ny recalculations of previous awards which result from hearings, reconsideration or appeal." Thus, the hearing representative incorrectly stated that the Office medical adviser incorrectly used the fifth edition of the A.M.A., *Guides* in reaching his determination. Upon a review of both the fourth and fifth editions of the A.M.A., *Guides*, the Board notes that there is no difference in the impairment rating in appellant's case. Compare Table 62, fourth edition at page 83, with Table 17-31, fifth edition at page 544.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (2003).

⁸ FECA Bulletin No. 01-05 (issued January 29, 2001).

ANALYSIS

The Board finds that the opinion of the Office medical adviser is the only medical report that conforms to the relevant standards of the A.M.A., *Guides*. In an August 25, 2003 report, the Office medical adviser correctly applied Table 17-33 on page 546 of the fifth edition of the A.M.A., *Guides* to determine that appellant was entitled to a 10 percent impairment of the left lower extremity for his partial medial meniscectomy. Moreover, he explained in his August 25, 2003 report, that it was not appropriate to add an impairment rating for cartilage intervals, as was suggested by Dr. Weiss, as the record contained no supporting x-ray evidence.

In an August 2, 2000 report, Dr. Weiss, using the fourth edition of the A.M.A., *Guides*, concluded that appellant had a 10 percent impairment due to his right lateral/medial meniscectomy⁹ and a 12 percent impairment for a 2.5 cartilage interval for right knee arthritis,¹⁰ resulting in a total 21 percent impairment of the right lower extremity. In support of his impairment rating for appellant's right knee arthritis, Dr. Weiss refers to a "2.5 m[illi]m[eter] cartilage interval as noted by surgeon Dr. O'Dowd." There is no indication as to how the cartilage interval, as reportedly seen by Dr. O'Dowd, was determined. The record contains no x-ray interpretation showing a 2.5 millimeter cartilage interval in appellant's right. The Board finds that Dr. Weiss' report does not conform with the A.M.A., *Guides* and is, therefore, of diminished probative value.

As the reports of the Office medical adviser provided the only evaluation which conform with the protocols of the A.M.A., *Guides*, his opinion constitutes the weight of the medical evidence.¹¹ The Office medical adviser reviewed the clinical findings made by Dr. Weiss and explained his application of the A.M.A., *Guides*. As noted, the A.M.A., *Guides* have been adopted to provide for a single set of tables to achieve uniform standards applicable to all claimants. The use of roentgenographic-based cartilage interval measurements provides a uniform standard for the determination of impairment rather than a subjective measurement made by visualization at the time of surgery and there is no indication how the cartilage interval noted by Dr. Weiss was determined.

CONCLUSION

The Board finds that appellant has not established that he has more than a 10 percent impairment to his right lower extremity.

⁹ *Supra* note 2 at Table 64, page 85.

¹⁰ *Supra* note 2 at Table 62, page 83.

¹¹ *See Bobby L. Jackson*, 40 ECAB 593 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 13, 2004 is affirmed.

Issued: May 23, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member