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

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| **R.A., Appellant** | ) | |
| **and** | ) | **Docket No. 07-83** |
| | ) | **Issued: April 12, 2007** |
| **U.S. POSTAL SERVICE, POST OFFICE, Oklahoma City, OK, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

### *JURISDICTION*

On October 11, 2006 appellant timely appealed from the Office of Workers' Compensation Programs' September 18, 2006 merit decision regarding his entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### *ISSUE*

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

### *FACTUAL HISTORY*

On August 30, 2004 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim alleging that he twisted his right knee when he stepped out of the back of a work truck. The Office accepted his claim for right tear of medial cartilage or meniscus of the knee. The Office authorized a right knee arthroscopic partial medial meniscectomy and chondroplasty

medial femoral condyle, which he underwent on March 8, 2005. Following a period of physical therapy, appellant returned to work full duty on April 27, 2005.

On March 23, 2006 appellant filed a request for a schedule award. By letter dated April 5, 2006, the Office advised appellant's treating physician, Dr. Barry L. Northcutt, a Board-certified orthopedic surgeon, of the evidence required for an assessment of permanent impairment to the right lower extremity under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In an April 27, 2005 progress report, Dr. Northcutt stated that appellant had completely recovered from his meniscectomy and debridement. He opined that appellant reached maximum medical improvement and released him to full work duties without restrictions.

As Dr. Northcutt did not provide a report in which to evaluate appellant for a right lower extremity impairment under the A.M.A., *Guides*, the Office referred appellant for a second opinion evaluation with Dr. Shawn Smith, a physiatrist. In a July 24, 2006 report, Dr. Smith noted that appellant underwent a partial medial meniscectomy of the right knee and chondroplasty of the patella on March 8, 2005 and was released to full duty on April 27, 2005. Examination findings revealed 120 degrees flexion right knee, 0 degrees extension right knee with no joint contractures or ankylosis, no significant pain, no weakness, no atrophy, no sensory deficits and no effusion. Dr. Smith stated that appellant reached maximum medical improvement on April 27, 2005. He found that, under Table 17-10 page 537 of the A.M.A., *Guides,* there was no impairment related to residual range of motion, strength and neurologic examination. Referring to Table 17-33, page 546 of the A.M.A., *Guides,* Dr. Smith concluded that appellant had two percent lower extremity impairment related to the partial meniscectomy.

The Office forwarded the case file to the Office medical adviser for an opinion on the degree of permanent impairment of appellant's right lower extremity. In an August 25, 2006 report, the Office medical adviser concluded that the date of maximum medical improvement was July 24, 2006, the date of Dr. Smith's evaluation. Based on Table 17-33, page 546 of the A.M.A., *Guides* and Dr. Smith's examination findings, the Office medical adviser concluded that appellant had two percent right lower extremity impairment based on a partial medial meniscectomy of the right knee.

On September 12, 2006 the Office granted appellant a schedule award for a two percent impairment to his right lower extremity, finding that the date of maximum medical improvement was July 24, 2005. The award was for a period of 5.76 weeks, from July 24 to September 2, 2005. On September 18, 2006 the Office issued a corrected schedule award decision. It granted appellant a schedule award for two percent impairment to his right lower extremity, but noted that the date of maximum medical improvement was July 24, 2006 and the period of the award of 5.76 ran from July 24 to September 2, 2006.

## ***LEGAL PRECEDENT***

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[3]

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be 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.[4]

The A.M.A., *Guides* provide that, in evaluating lower extremity impairment, it is the responsibility of the evaluating physician to explain in writing why a particular method to assign the impairment rating was chosen. When uncertain about which method to choose, the evaluator should calculate the impairment using different alternatives and choose the method or combination of methods that gives the most clinically accurate impairment rating.[5]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[6]

## ***ANALYSIS***

The Office accepted that appellant sustained a torn medial cartilage of the right knee and authorized surgery. Appellant filed a claim for a schedule award on March 23, 2006. As his treating physician, Dr. Northcutt, did not provide a sufficient description of the impairment so

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *Id.*

[4] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

[5] *Richard F. Williams*, 55 ECAB 343, 347 (2004).

[6] See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

the A.M.A., *Guides* could be utilized in determining impairment, the Office referred appellant to Dr. Smith, a second opinion physician, for an evaluation. In his July 24, 2006 report, Dr. Smith utilized a diagnostic-based estimate in concluding that appellant had two percent impairment based upon the partial medial meniscectomy of the right knee.

An Office medical adviser reviewed Dr. Smith's findings and concurred with his determination that appellant had two percent impairment due to partial medial meniscectomy.[7] The Board notes that, as there were no ratable range of motion, sensory or neurological deficits under the A.M.A., *Guides*,[8] a diagnostic-based impairment rating was appropriate.[9] The Board, thus, finds that the evidence supports that appellant has no more than two percent impairment of the right leg based on a diagnosis-based impairment rating. Consequently, he has not established entitlement to a schedule award greater than the two percent awarded by the Office.

## ***CONCLUSION***

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

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the September 18, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[7] A.M.A., *Guides* 546, Table 17-33.

[8] *See id*. at 537, Table 17-10.

[9] *See Robert B. Rozelle, supra* note 4.