

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

A.C., Appellant)

and)

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Winter Springs, FL,
Employer**)

**Docket No. 07-199
Issued: April 16, 2007**

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 30, 2006 appellant filed a timely appeal from a November 29, 2005 decision of the Office of Workers' Compensation Programs, adjudicating her schedule award claim. 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 has more than a two percent permanent impairment of the right lower extremity.

FACTUAL HISTORY

On May 8, 2004 appellant, then a 58-year-old mail handler, filed a traumatic injury claim alleging that she injured her right leg when she tripped on a piece of metal and twisted her knee. The Office accepted her claim for a right knee sprain and strain. On July 30, 2004 appellant underwent arthroscopic surgery and a partial medial meniscectomy of the right knee performed

by Dr. Joseph B. Billings, a Board-certified orthopedic surgeon. On May 20, 2005 appellant filed a claim for a schedule award.

On May 9, 2005 Dr. Billings stated that, based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ appellant had a 32 percent impairment of the right knee, including 25 percent for a Grade 1 muscle weakness and 7 percent for mild arthritis in her knee. Appellant had no impairment for range of motion.

On July 7, 2005 a district medical adviser stated that, based on the physical findings of Dr. Billings, appellant had a two percent impairment of the right leg for a partial medial meniscectomy, according to Table 17-33 at page 546 of the A.M.A., *Guides*.

On August 11, 2005 the Office asked Dr. Billings to review the district medical adviser's memorandum and indicate whether he agreed with the two percent impairment rating. On September 12, 2005 Dr. Billings indicated that there was no change in his impairment rating for appellant.

By decision dated November 29, 2005, the Office granted appellant a schedule award for 5.76 weeks, for the period May 9 to June 18, 2005, based on a two percent impairment of the right leg.²

LEGAL PRECEDENT

The schedule award provision of the Act³ and its implementing regulation⁴ 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*⁵ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

¹ A.M.A., *Guides* (5th ed. 2001).

² The Federal Employees' Compensation Act provides for 288 weeks of compensation for 100 percent loss or loss of use of a lower extremity. 5 U.S.C. § 8107(c)(2). Multiplying 288 weeks by two percent equals 5.76 weeks of compensation. The Board notes that appellant submitted additional evidence subsequent to the Office decision of November 29, 2005. The Board's jurisdiction 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). The Board may not consider this evidence for the first time on appeal.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

ANALYSIS

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required. Dr. Billings stated that, based on the fifth edition of the A.M.A., *Guides*, appellant had a 32 percent impairment of the right knee, including 25 percent for a Grade 1 muscle weakness and 7 percent for mild arthritis in her knee. Maximum medical improvement was the date of his report, May 9, 2005. It appears that Dr. Billings obtained the 25 percent impairment for muscle weakness from Table 17-8 at page 532 of the A.M.A., *Guides*. According to Table 17-8, a Grade 1 muscle weakness of the knee equals a 25 percent impairment of the lower extremity. It appears that Dr. Billings based his finding of a seven percent impairment due to arthritis on Table 17-31 at page 544 of the A.M.A., *Guides* which provides for a seven percent impairment of the lower extremity for a three millimeter cartilage level of the knee. However, Dr. Billings did not provide a cartilage level measurement obtained by x-ray in support of his impairment rating for arthritis impairment as required for application of Table 17-31. In any event, impairment due to muscle weakness cannot be combined with impairment due to arthritis according to the cross-usage chart, Table 17-2 at page 526 of the A.M.A., *Guides*.

The Office medical adviser applied Dr. Billings' findings to the A.M.A., *Guides* and determined that appellant had a two percent permanent impairment of the right leg based on Table 17-33 at page 546 which provides for a two percent impairment of the knee for a partial medial meniscectomy.⁶

The A.M.A., *Guides* provides that, if more than one rating method can be used, the method that provides the higher rating should be adopted.⁷ In this case, the cross-usage chart, Table 17-2 permits combination of a diagnosis-based estimate impairment from Table 17-33, for a partial medial meniscectomy, with arthritis impairment based on Table 17-31. However, no cartilage level measurement was provided by Dr. Billings. Therefore, Table 17-31 cannot be used. Alternatively, appellant's impairment rating could be based on Table 17-8 which, as Dr. Billings found, provides for a 25 percent impairment for Grade 1 muscle weakness of the knee. This case must be remanded for further development. On remand, the Office should obtain a medical report based on a thorough physical examination which includes measurement of appellant's right knee cartilage level by x-ray. The medical report should include an impairment rating for appellant's right knee using the rating method, based on correct application of the A.M.A., *Guides*, which provides the highest percentage of impairment.

CONCLUSION

The Board finds that this case is not in posture for a decision. On remand, the Office should obtain a thorough medical report which provides an impairment rating for appellant's

⁶ See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate 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, especially when there is more than one evaluation of the impairment present).

⁷ A.M.A., *Guides* 527.

right knee using the rating method, based on correct application of the A.M.A., *Guides*, which provides the highest percentage of impairment. After such further development as the Office deems necessary, it should issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 29, 2005 is set aside and the case remanded for further action consistent with this decision.

Issued: April 16, 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