

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

M.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 07-297
Issued: June 7, 2007**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 14, 2006 appellant timely appealed the November 7, 2006 merit decision of the Office of Workers' Compensation Programs, which granted a schedule award for permanent impairment of the lower extremities. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has more than an eight percent bilateral impairment of the lower extremities.

FACTUAL HISTORY

Appellant, an 83-year-old retired mechanic's helper, has an accepted claim for low back strain, spondylosis and degenerative disc disease, which arose on July 12, 1981. At the time of his 1981 employment injury, he had preexisting degenerative joint disease of both knees. The

Office placed appellant on the periodic compensation rolls and he received appropriate wage-loss compensation.¹

On June 13, 2006 appellant filed a claim for a schedule award. Dr. Michael J. Platto, a Board-certified physiatrist, provided a June 5, 2006 whole person impairment rating of 12 percent due to the accepted back condition. In a June 14, 2006 supplemental report, he identified 37 percent bilateral lower extremity impairment due to appellant's preexisting knee condition, for which he underwent total knee arthroplasty. Dr. Platto also recalculated the whole person impairment associated with appellant's back condition and found eight percent impairment of each lower extremity.

The district medical adviser reviewed the case record. In a report dated September 19, 2006, he found eight percent impairment to each lower extremity. The district medical adviser also indicated that appellant had reached maximum medical improvement on June 5, 2006.

On November 7, 2006 the Office granted schedule awards for eight percent impairment of the left and right lower extremities. The award covered 46.08 weeks from June 5, 2006 to April 23, 2007.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act set 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁴

ANALYSIS

Appellant contends that his schedule award should reflect the impairment attributable to his preexisting degenerative joint disease of both knees. The Board agrees. In determining entitlement to a schedule award, preexisting impairment to the scheduled member should be included.⁵ Any previous impairment to the member under consideration is included in

¹ Effective March 1, 1998, appellant elected to receive disability retirement benefits from the Office of Personnel Management. Accordingly, he was removed from the periodic compensation rolls.

² For a total loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2) (2000).

³ 20 C.F.R. § 10.404 (2006).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁵ *Carol A. Smart*, 57 ECAB ___ (Docket No. 05-1873, January 24, 2006); *Michael C. Milner*, 53 ECAB 446, 450 (2002).

calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.⁶

Dr. Platto found 37 percent impairment of both knees based on total knee arthroplasty.⁷ This 37 percent impairment was in addition to the 8 percent impairment for lower extremity motor and sensory deficits attributable to the 1981 accepted back injury. In his September 19, 2006 report, the district medical adviser stated that the degenerative joint disease in appellant's knees is not work related, therefore, the 37 percent lower extremity impairment is not acceptable and must be eliminated from any possible schedule award. Because appellant's preexisting knee condition was improperly excluded in calculating the percentage loss of use of his lower extremities, the case is remanded to the Office for further development of the record, followed by a *de novo* decision regarding appellant's entitlement to a schedule award.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: June 7, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(a)(2) (November 1998).

⁷ The record does not include an operative report regarding the bilateral knee arthroplasty Dr. Platto referenced.