

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

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K.S., Appellant )  
and ) Docket No. 07-235  
U.S. POSTAL SERVICE, PROCESSING & ) Issued: May 14, 2007  
DISTRIBUTION CENTER, Greensboro, NC, )  
Employer )  
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 3, 2006 appellant filed a timely appeal from a September 6, 2006 decision of the Office of Workers' Compensation Programs, adjudicating his 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 24 percent permanent impairment of the right lower extremity.

## **FACTUAL HISTORY**

This case was previously before the Board. By decision dated March 13, 2006, the Board remanded an October 18, 2005 Office schedule award decision for further development of the medical evidence.<sup>1</sup> The March 13, 2006 Board decision is incorporated herein by reference.

On May 16, 2006 the Office referred appellant to Dr. Paul Harlan Wright, a Board-certified surgeon, for an impairment rating of his right lower extremity. On June 22, 2006 Dr. Wright provided a history of appellant's condition and findings on examination. He stated:

"In the category of arthritis, there are guidelines in Table 17-31 on page 544. We have radiographs today and I cannot measure any joint loss. However, he obviously has chronic changes consistent with traumatic arthritis.... The footnote on Table 17-31 indicates 5 percent lower extremity impairment for the patella with a history of direct trauma and crepitus on physical examination, but without joint space narrowing on x-rays. In addition, he clearly has a degree of traumatic arthritis involving the tibial femoral articulation, especially the lateral compartment. In this regard, I think the rating for arthritis of the knee would be at least 10 percent of the lower extremity."

"On evaluation of range of motion today, we can use Table 17-10 on page 537. I suspect that we could achieve more than 110 degrees of flexion, but probably not normal flexion. Likewise, we may be able to achieve a few more degrees of extension than what was measured. However, [appellant] did not have full extension of the knee even under general anesthesia. It looks like the appropriate rating for range of motion technique would be somewhere between 10 and 30 percent. I would, therefore, assign a rating of 20 percent for the range of motion technique."

"In looking at gait analysis, we can use Table 17-5 on page 529. In all likelihood, the most appropriate category is mild-A, indicating a ... lower extremity impairment of 17 [to] 18 percent."

"In looking at the diagnosis based estimates, we can use Table 17-33 on page 546. [Appellant's] records indicate that he has had a partial medial and lateral meniscectomy with a rating of 10 percent of the lower extremity. He has also had articular cartilage procedures, which are not listed specifically. Using the approximation technique, it seems reasonable to look at the value for undisplaced plateau fracture, which corresponds to five percent of the lower extremity. This gives a total for diagnosis based estimate at 15 percent of the lower extremity."

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<sup>1</sup> Docket No. 06-229 (issued March 13, 2006). Appellant, a mail processor, sustained a right knee sprain and aggravation of right knee osteoarthritis in the performance of duty on October 8, 2002. By decision dated March 23, 2005, the Office granted appellant a schedule award for a 20 percent impairment of the right lower extremity. On October 18, 2005 the Office denied appellant's request for further merit review. This case was combined with a case accepted for a right knee meniscus tear on May 30, 1995. Appellant was granted two schedule awards totaling a 20 percent impairment of the right lower extremity for the 1995 employment injury (18 percent plus 2 percent).

“After going through these techniques, we need to look at the cross usage table, Table 17-2 on page 526. The gait derangement method is a stand alone technique and would be 17 [to] 18 percent of the lower extremity. The range of motion does not combine with any other of today’s methods and would be 20 percent of the lower extremity. The arthritis method (10 percent) and the diagnosis based estimate (15 percent) do combine to give a total value of 24 percent of the lower extremity ([C]ombined [V]alue [C]hart on page 604).”

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“Following the summary outlined in [s]ection 17.3 on page 555, we would use the combination of degenerative joint disease [arthritis] and DBE [diagnosis based estimate] to come up with a final permanent impairment rating of 24 percent of the lower extremity.”

On August 2, 2006 the Office medical adviser stated that Dr. Wright correctly determined that appellant had a 24 percent impairment of the lower extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup>

On August 2, 2006 the Office advised appellant that, in its October 18, 2005 schedule award decision, it incorrectly calculated the amount of compensation payable as \$9,849.83 for a 20 percent impairment of the right lower extremity. The Office stated that appellant should have been paid \$38,274.68 (57.6 weeks of compensation multiplied by his weekly compensation rate of \$656.66 plus Consumer Price Index pay increases). The Office advised that it would pay appellant an additional \$28, 424.85 (\$38,274.68 minus the \$9,849.83 previously paid).

In an amended schedule award decision dated September 6, 2006, the Office granted appellant an additional award in the amount of \$7,564.67 for 11.52 weeks based on a four percent impairment of the right lower extremity.<sup>3</sup> The Office noted that it had previously granted appellant compensation based on a 20 percent impairment of the right lower extremity.

#### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>4</sup> and its implementing regulation<sup>5</sup> 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

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<sup>2</sup> The Board notes that the Office claims examiner erroneously indicated that Dr. Wright was a referee physician, rather than a second opinion physician.

<sup>3</sup> 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 four percent equals 11.52 weeks of compensation. The Board notes that appellant submitted additional evidence subsequent to the Office decision of September 6, 2006. 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.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

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*<sup>6</sup> has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

### **ANALYSIS**

The Board finds that appellant has no more than a 24 percent impairment of the right lower extremity causally related to his October 8, 2002 employment injury.

Dr. Wright provided findings on physical examination and correctly applied the fifth edition of the A.M.A., *Guides* in determining that appellant had a 24 percent impairment of the right lower extremity. He determined appellant's impairment using range of motion measurements, gait derangement, arthritis and diagnosis based estimates (based on his surgical procedures). Dr. Wright determined that appellant's arthritis impairment could be combined with the diagnosis based estimate method and yielded a higher impairment than the other methods in the A.M.A., *Guides*. He found that appellant had 10 percent impairment due to arthritis and 15 percent for diagnosis based estimates according to Table 17-33 at page 546 for a partial medial and lateral meniscectomy (10 percent) and an undisplaced plateau fracture (5 percent). Dr. Wright combined the impairment for arthritis and diagnosis based estimates at 24 percent of the right lower extremity using the Combined Values Chart on page 604. The Office found that appellant had previously been awarded a total of 20 percent impairment for his 1995 and 2002 right lower extremity injuries. Therefore, it correctly granted appellant a schedule award based on a four percent additional impairment in its September 6, 2006 decision. There is no probative medical evidence of record establishing that appellant has more than a 24 percent impairment of the right lower extremity.

### **CONCLUSION**

The Board finds that appellant has no more than a 24 percent impairment of the right lower extremity.

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<sup>6</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 6, 2006 is affirmed.

Issued: May 14, 2007  
Washington, DC

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

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

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