

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

P.S., Appellant

and

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

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**Docket No. 08-981
Issued: December 3, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 14, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated February 11, 2008. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

ISSUE

The issue is whether appellant has more than a five percent permanent impairment for the left lower extremity.

FACTUAL HISTORY

Appellant, a 50-year-old letter carrier, injured his left knee on August 2, 2000 while trying to avoid an approaching dog. He filed a claim for benefits, which the Office accepted for left knee and left leg sprain and torn medial meniscus of the left knee.

Appellant underwent a medial meniscectomy on his left knee to repair a torn medial meniscus on September 22, 2000.

In a report dated September 24, 2007, Dr. Richard I. Zamarin, Board-certified in orthopedic surgery, stated:

“Examination of [appellant’s] left knee revealed well-healed arthroscopic portals. There was no joint effusion. There was no tenderness along the medial joint line. He had full range of motion of his left knee. There was no crepitus during range of motion. There was no varus or valgus laxity. Lachman test was negative. Posterior drawer was negative. Pivot shift was negative. [Appellant] ambulated without an antalgic gait or assisted devices.

“Examination of [appellant’s] left heel revealed full range of motion of his ankle and subtalar joint. There was tenderness on the plantar aspect of his left calcaneus.”

Dr. Zamarin found that appellant had a seven percent left lower extremity impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) [A.M.A., *Guides*]. He derived this rating based on Table 17-31 at page 544, from which he derived a five percent left lower extremity impairment based upon the nature of his injury and appellant’s complaints of patellofemoral pain with crepitus without joint space narrowing, while carrying heavier objects and walking, as shown by x-rays; and from Table 17-33 at page 546, which yielded a two percent left lower extremity impairment for a partial medial meniscectomy. Dr. Zamarin further stated:

“There is no diagnosed-based estimate impairment for plantar fasciitis. I would classify his pain as Class I, mild, based on Table 18-3, on page 575.... I do not believe that there is any impairment to the lower extremity for his plantar fasciitis because of pain.”

On October 18, 2007 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left lower extremity.

In a report dated October 29, 2007, an Office medical adviser found that appellant had a five percent impairment of his left lower extremity pursuant to the A.M.A., *Guides*. He adopted Dr. Zamarin’s two percent left lower extremity impairment for a partial medial meniscectomy; however, he rejected Dr. Zamarin’s rating of five percent impairment for patellofemoral pain at Table 17-31, which, he stated, requires a finding of crepitation on physical examination. The Office medical adviser added a three percent rating for persistent left knee pain for a total five percent left lower extremity impairment.¹

On February 11, 2008 the Office granted appellant a schedule award for a five percent permanent impairment of the left lower extremity for the period September 24, 2007 to January 2, 2008, for a total of 14.4 weeks of compensation.

¹ The Board notes that the Office medical adviser incorrectly stated that Dr. Zamarin recommended three percent impairment for plantar fasciitis.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.⁴

ANALYSIS

In this case, the Office medical adviser utilized findings made by Dr. Zamarin in his September 24, 2007 report to render a five percent impairment left lower extremity impairment. He relied on Dr. Zamarin's rating of a two percent left lower extremity impairment for a partial medial meniscectomy pursuant to Table 17-33 at page 546 and added a three percent rating for persistent left knee pain while walking for a total five percent left lower extremity impairment. The Office medical adviser indicated that Dr. Zamarin's rating of five percent impairment for patellofemoral pain at Table 17-31 was not supported by a footnote to Table 17-31, which states:

“In an individual with a history of direct trauma, a complaint of patellofemoral pain and crepitation on physical examination, but without joint space narrowing on x-rays, a two percent whole person or five percent lower extremity impairment is given.”⁵

The Office medical adviser noted that Dr. Zamarin explicitly stated in his September 24, 2007 report that appellant did not demonstrate crepitus upon examination. His rejection of a five percent impairment rating for crepitation under Table 17-31 was therefore proper and supported by the record.

Accordingly, the Board holds that the Office properly found that the opinion of the Office medical adviser constituted sufficient medical rationale to support its February 11, 2008 schedule award decision. The Board therefore affirms the Office's February 11, 2008 schedule award decision of the Office, granting appellant an award for a five percent permanent impairment to his left lower extremity.

As there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was entitled to a five percent permanent for his left lower extremity.

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides* at 544.

CONCLUSION

The Board finds that appellant has no more than a five percent permanent impairment for his left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 3, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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