

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

T.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bethesda, MD, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 08-1651
Issued: December 5, 2008**

Appearances:
Appellant, pro se
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 May 23, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 14, 2008 denying an additional schedule award. 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 an eight percent permanent impairment to his right leg.

FACTUAL HISTORY

The case was before the Board on a prior appeal. In a decision dated September 29, 2003, the Board set aside a December 3, 2002 Office decision and remanded the case for further development. The Board noted that the Office did not explain why it selected a diagnosis-based leg impairment rating of two percent rather than an eight percent anatomic rating for thigh

atrophy. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

By decision dated March 10, 2004, the Office issued a schedule award for an additional six percent permanent impairment to the right leg. The period of the award was 23.04 weeks commencing October 1, 2001.

In a report dated December 11, 2006, Dr. Irvin Guterman, an attending orthopedic surgeon, opined that appellant had a 10 percent right leg permanent impairment. He explained that appellant had an eight percent impairment for thigh atrophy, and a two percent impairment for a partial lateral meniscectomy.

An Office medical adviser reviewed the evidence and opined in a February 13, 2008 report that appellant's right leg impairment was eight percent. The medical adviser explained that impairment for atrophy could not be combined with a diagnosis-based meniscectomy impairment.

By decision dated May 14, 2008, the Office determined that appellant was not entitled to an additional schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

ANALYSIS

The A.M.A., *Guides* uses anatomic, functional and diagnosis-based assessments to evaluate leg impairments. An impairment based on muscle atrophy is an anatomic assessment based on Table 17-6,³ while an impairment for partial lateral meniscectomy is a diagnosis-based method under Table 17-33.⁴ The A.M.A., *Guides* specifically provide at Table 17-2, that the evaluator should not combine both muscle atrophy with a diagnosis-based impairment.⁵

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

² A. George Lampo, 45 ECAB 441 (1994).

³ A.M.A., *Guides* 530, Table 17-6.

⁴ *Id.* at 546, Table 17-33.

⁵ *Id.* at 526, Table 17-2.

Dr. Guterman opined that appellant had a 10 percent right leg impairment, combining an 8 percent muscle atrophy impairment with a 2 percent impairment for the partial lateral meniscectomy. The Office medical adviser properly found that the A.M.A., *Guides* preclude these two evaluation methods from being combined. The Board accordingly finds the Office properly determined that appellant does not have greater than the eight percent impairment previously received.

CONCLUSION

The evidence does not establish more than an eight percent permanent impairment to the right leg.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2008 is affirmed.

Issued: December 5, 2008
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