

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

P.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pendleton, OR, Employer**

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**Docket No. 08-1562
Issued: July 14, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 13, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 4, 2008 granting her a 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 50 percent impairment of her right lower extremity for which she received a schedule award.

FACTUAL HISTORY

On November 9, 1992 appellant, then a 41-year-old rural carrier, filed a traumatic injury claim alleging that she sustained bruised knees when a motor vehicle bumped into her legs. The Office accepted this claim for contusion and internal derangement of the right knee. Appellant underwent right knee surgery on July 13, 1993 due to a posterior horn tear of the medial meniscus resulting in removal of one third of the posterior horn. On August 4, 1994 she underwent arthroscopy, patellar shave and lateral retinacular release of the right knee. Appellant

fell in the performance of duty on December 16, 1998 and sustained bilateral knee contusion and internal derangement of the right knee resulting in a right knee partial lateral meniscectomy, debridement and chondroplasty on May 6, 1999. On January 8, 2003 she filed a traumatic injury claim alleging that she injured her right knee when a tray fell on it. The Office accepted this claim for right knee strain on May 7, 2003. Appellant filed an occupational disease claim on February 7, 2003 alleging that as a result of her 1992 employment injury she had undergone three surgeries. She underwent a total right knee replacement on August 11, 2003. The Office accepted the conditions of post-traumatic degenerative right knee arthritis and right knee replacement as due to her accepted employment injuries. Appellant returned to work on November 24, 2003.

Appellant requested a schedule award on March 14, 2005. By decision dated May 18, 2006, the Office denied her request for a schedule award as she failed to submit medical evidence discussing her permanent impairment. Appellant requested reconsideration on May 17, 2007. By decision dated May 30, 2007, the Office denied modification, finding that she had not submitted sufficient medical opinion evidence to establish the extent of the permanent impairment to her right knee.

The Office referred appellant for a second opinion evaluation with Dr. Stephen J. Thomas, Jr., a Board-certified orthopedic surgeon, who examined appellant on October 25, 2007. Dr. Thomas found that appellant could flex her right knee 95 degrees and had extension of 0 degrees. He noted that appellant had five degrees of instability and that she reported right knee pain. In accordance with the Tables 17-33 and 17-35 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr. Thomas rated 10 points for continual pain, 19 points for loss of range of motion, stable to anterior and posterior testing for 10 points, 5 degrees of laxity in the medial lateral ligaments for 15 points for a total of 54 points. He concluded that appellant had 50 percent impairment of the right lower extremity and reached maximum medical improvement in February 2004.

The Office medical adviser reviewed this report on November 27, 2007 and agreed with the impairment rating of Dr. Thomas. By decision dated January 14, 2008, the Office granted appellant a schedule award for 50 percent impairment of her right lower extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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* has been adopted by the

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

implementing regulation as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁴

ANALYSIS

Appellant asserts that she has greater than 50 percent permanent impairment of the right leg. The Office accepted appellant's claims for contusion and internal derangement of the right knee, as well as right knee strain, post-traumatic degenerative arthritis and total knee replacement. It authorized arthroscopic surgeries which were performed on July 13, 1993, August 4, 1994 and May 6, 1999 and a right total knee replacement which was performed on August 11, 2003.

In a report dated October 25, 2007, Dr. Thomas, a Board-certified orthopedic surgeon, provided range of motion figures, instability estimates and discussed appellant's knee pain. He provided a numerical rating with 10 points for continual pain, 19 points for loss of range of motion, 10 points due to instability and 15 points due to laxity of the medial ligaments in accordance with Table 17-35 of the A.M.A., *Guides*.⁵ Dr. Thomas concluded that appellant had 50 percent impairment of the right lower extremity⁶ and that she reached maximum medical improvement in February 2004.

The medical adviser properly applied the A.M.A., *Guides* to the information provided by Dr. Thomas. He agreed with the impairment rating of 50 percent of the right lower extremity in accordance with Tables 17-35 and 17-33 of the A.M.A., *Guides* as appellant obtained fair results from the right total knee replacement.⁷ The medical adviser opined that, under Table 17-33 of the A.M.A., *Guides*, a total knee replacement totaling 54 points represents 50 percent permanent impairment of a lower extremity. This evaluation conforms to the A.M.A., *Guides*.⁸ Appellant did not submit any medical evidence supporting more than 50 percent permanent impairment of his right lower extremity. The Board finds that appellant has no more than a 50 percent impairment of the right lower extremity.

CONCLUSION

The Board finds that the evidence establishes that appellant has 50 percent impairment of her right lower extremity for which she received a schedule award.

³ *Id.*

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

⁵ A.M.A., *Guides* 549, Table 17-35.

⁶ *Id.* at 546, Table 17-33.

⁷ *Id.* at 549, Table 17-35; 546, Table 17-33.

⁸ *E.B.*, 58 ECAB ____ (Docket No. 07-963, issued September 14, 2007).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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