

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL B. BETHKE and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Milwaukee, Wis.

*Docket No. 97-679; Submitted on the Record;
Issued November 27, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a seven percent permanent impairment of the left leg.

On June 16, 1990 appellant, then a 42-year-old mechanic, was removing mailbags to clear a jam on a belt when a mailbag fell and struck him in the left knee. The Office of Workers' Compensation Programs accepted appellant's claim for left knee strain, left knee contusion and patellar tendinitis. Appellant intermittently lost time from work thereafter and received compensation for the time he lost. Appellant underwent arthroscopic knee surgery on March 15, 1991 for debridement of a medial plica. In an April 17, 1992 letter, the employing establishment offered appellant a modified distribution clerk position which he accepted. In a February 3, 1993 decision, the Office found that appellant had a 53 percent loss of wage-earning capacity based on his actual earnings in the modified distribution clerk position.¹

In an October 21, 1996 decision, the Office issued a schedule award for a seven percent permanent impairment of the left leg. The Office indicated that the period of the award was February 18 through July 9, 1993.

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

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that

¹ In subsequent proceedings, the Office considered whether appellant's compensation fully reflected his rate of pay, taking into account his night differential pay.

² 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.304.

there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ has been adopted by the Office of Workers' Compensation Programs as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

The Office based the schedule award on the August 12, 1996 memorandum of the Office medical adviser who calculated that appellant had a seven percent permanent impairment of the leg due to dysesthesia or pain in the femoral nerve distribution.⁶ He based his calculation on the February 18, 1993 form reports of Dr. Stephen Nord, a Board-certified orthopedic surgeon, who diagnosed quadriceps tendinitis and concluded that appellant had a 10 percent permanent impairment of the left leg due to pain. The schedule award therefore was based on medical reports that had been prepared three years prior to the schedule award decision.⁷ The Office did not seek to determine the current extent of appellant's permanent impairment at the time it issued the schedule award. The case must therefore be remanded for referral of appellant to an appropriate specialist for an examination, description of his left knee condition and estimate of the permanent impairment of his left knee in accordance with the A.M.A., *Guides*. After further development as it may find necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated October 21, 1996, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
November 27, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁴ 4th ed. (1993).

⁵ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁶ A.M.A., *Guides*, p. 89, Table 68.

⁷ *See Keith Hanselman*, 42 ECAB 680, 687 (1991).