

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN W. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 98-281; Submitted on the Record;
Issued August 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has greater than a 10 percent permanent loss of use of the right leg.

The Office of Workers' Compensation Programs accepted that appellant's August 29, 1994 employment injury resulted in a right knee sprain. Appellant filed a claim for a schedule award. In a July 17, 1996 report, appellant's attending physician, Dr. Claudia Thomas Carty, stated that appellant had no laxity of the knee, that his quadriceps circumferences were 48.5 centimeters (cm) on the right and 50.0 on the left at 10 cm above the patella, that the knee lacked 5 degrees of full extension and that flexion was limited to 135 degrees. Dr. Carty also noted that appellant complained of intermittent pain, occasional swelling and of occasional giving out of the knee when walking or negotiating stairs. Dr. Carty estimated the impairment of the knee due to weakness, atrophy and pain at 20 percent of the lower extremity and recommended an impairment rating of 30 percent of the right leg.

An Office medical adviser reviewed Dr. Carty's report on October 30, 1996 and, using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, assigned 0 percent for 135 degrees of flexion and 10 percent for 5 degrees of flexion contracture. With regard to the 20 percent additional impairment due to weakness, atrophy, pain or discomfort estimated by Dr. Carty, the Office medical adviser stated this was not allowable, as there was no specific citation.

On December 11, 1996 the Office issued appellant a schedule award for a 10 percent permanent loss of use of the right leg.

Appellant requested reconsideration and submitted a report dated April 25, 1997 from Dr. Allan H. Macht stating that flexion of the right knee was limited to 130 degrees and that extension was complete but weakly performed. Dr. Macht also reported swelling, a grating and grinding sensation, slight weakness and no laxness of the ligaments of the right knee. X-rays

revealed arthritic changes throughout the right knee. Using the A.M.A., *Guides*, Dr. Macht assigned 2 percent for a partial lateral meniscectomy that was performed prior to appellant's August 29, 1994 injury, 0 percent for 130 degrees of flexion, 12 percent for a Grade 4 impairment from muscle weakness and some additional impairment for arthritis, chondromalacia, stiffness and soreness, for a total of 25 percent permanent impairment of the right leg.

An Office medical adviser reviewed Dr. Macht's report on July 24, 1997 and stated, "According to the A.M.A., *Guides* only one evaluation method should be used to evaluate a specific impairment.' Dr. Macht has combined several methods to obtain his percentage of impairment. I agree with the rating of ten percent impairment to the lower extremity based on loss of extension of five degrees (Page 78, Table 41)."

By decision dated August 22, 1997, an Office hearing representative found that the weight of the medical evidence showed that appellant had a 10 percent permanent loss of use of his right leg.

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 specified 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

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

The Office medical adviser who reviewed Dr. Carty's July 17, 1996 report assigned 10 percent for 5 degrees of flexion contracture, as provided in Table 41 of Chapter 3 of the fourth edition of the A.M.A., *Guides*. This medical adviser then stated that the other impairments for Dr. Carty estimated 20 percent weakness, atrophy, pain or discomfort -- were not allowable, as there was no specific citation. The introduction to Chapter 3 of the fourth edition of the A.M.A., *Guides* states, "In general, the impairment percents shown in this chapter make allowance for the pain that may accompany the musculoskeletal system impairments." In the absence of an explanation from Dr. Carty why pain constitutes an additional impairment, it was proper for the Office not to assign a percentage of impairment for pain. While the A.M.A., *Guides* considers weakness (Table 39) and atrophy (Table 37) as alternate methods of measuring

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

the same impairment -- diminished muscle function⁴ -- the A.M.A., *Guides* does not proscribe the use of the range of motion table in combination with one of the methods for evaluating diminished muscle function.⁵ Dr. Carty did report 1.5 cm of thigh atrophy, which is covered by Table 37 of Chapter 3 of the A.M.A., *Guides* and considered it an impairment additional to the loss of motion.

The Office medical adviser who reviewed Dr. Macht's report correctly noted that Dr. Macht erred by combining several methods to obtain his percentage of impairment.⁶ Section 3.2i of the fourth edition of the A.M.A., *Guides* states, "The evaluating physician must determine whether diagnostic or examination criteria best describe the impairment of a specific patient. *The physician, in general, should decide which estimate best describes the situation and should use only one approach for each anatomic part.*" Thus, without an explanation to the contrary by Dr. Macht,⁷ the percentage for the partial meniscectomy was properly not combined with the impairment for weakness. Arthritis is ratable using Table 62 of Chapter 3 of the fourth edition of the A.M.A., *Guides*, but a measurement of cartilage interval on x-ray is required and none was provided by Dr. Macht. The Office medical adviser, however, provided no explanation for his agreement with the 10 percent rating for loss of motion in preference to the 12 percent impairment assigned by Dr. Macht for muscle weakness, which was consistent with Table 39 of Chapter 3 of the A.M.A., *Guides*. Dr. Macht reported that extension, the loss of motion for which the schedule award was based, was complete.

The case will be remanded to the Office for further review of and if necessary, further development of the medical evidence consistent with this decision of the Board and with the fourth edition of the A.M.A., *Guides*. The Office should then issue an appropriate decision on appellant's entitlement to an increased schedule award.

⁴ Section 3.2c states, "Diminished muscle function should be estimated under *only one* of several parts of this chapter, relating to gait derangement, muscle atrophy, manual muscle testing, or peripheral nerve injury."

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 Exhibit 4 (October 1995) does not include these in its list of incompatible tables.

⁶ This Office medical adviser, however, incorrectly quoted the A.M.A., *Guides* to state "only one evaluation method should be used to evaluate a specific impairment." The fourth edition does not state this at the point cited by the Office medical adviser or elsewhere.

⁷ Section 3.2i also states, "There may be instances in which elements from both diagnostic and examination approaches will apply to a specific situation."

The decisions of the Office of Workers' Compensation Programs dated August 22, 1997 and December 11, 1996 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
August 19, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member