

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ERNEST ELDER and U.S. POSTAL SERVICE, MANHATTAN  
VEHICLE MANAGEMENT FACILITY, New York, NY

*Docket No. 98-1737; Submitted on the Record;  
Issued February 2, 2000*

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DECISION and ORDER

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

The issue is whether appellant has more than a 12 percent permanent impairment of his left lower extremity, for which he received a schedule award.

On January 23, 1987 appellant, then a 61-year-old tractor trailer operator, filed a claim for traumatic injury, (Form CA-1), alleging that, on that day, he slipped and fell and disconnected the tendon in his left knee. Appellant stopped work and returned to work in a limited-duty employment capacity on June 16, 1987. Appellant returned to his regular employment duties on October 22, 1987. On June 12, 1987 appellant requested a schedule award. By letter dated June 25, 1987, the Office of Workers' Compensation Programs accepted appellant's claim for traumatic synovitis of the left knee and paid appropriate benefits.

On December 8, 1989 the Office awarded appellant a schedule award for a 10 percent permanent impairment to his left lower extremity. On May 17, 1991 appellant requested an additional schedule award and submitted medical reports from his treating physician, Dr. Paul Post, a Board-certified orthopedist. By letter dated June 30, 1992, Dr. Post indicated that appellant's schedule award should be increased to 25 percent. Dr. Post noted that appellant's physical examination revealed limited flexion and extension and further revealed 1/2 inch atrophy affecting his quadriceps and weakness affecting quadriceps 3/5. The Office referred the case to an Office medical adviser, who reviewed the medical evidence and determined that appellant's current total impairment was 12 percent. On May 20, 1993 the Office awarded appellant an additional two percent award for permanent loss of use of his left leg.

On November 15, 1994 appellant requested an additional schedule award and submitted a November 19, 1993 medical opinion from Dr. Post. In that report, he opined that appellant exhibited a 25 percent loss of use of his left leg as a result of the knee injury. By letter dated October 30, 1995, the Office asked Dr. Post to explain how he arrived at the 25 percent loss. Dr. Post noted that he based his calculations on the third edition of the American Medical

Association, *Guides to the Evaluation of Permanent Impairment*. By letter dated April 24, 1996, the Office requested that Dr. Post calculate appellant's impairment utilizing the guidelines enumerated in the fourth edition of the A.M.A. *Guides*.<sup>1</sup> In a letter received by the Office on May 17, 1996, appellant informed the Office that Dr. Post could only evaluate the evidence based on the third edition and, therefore, he was requesting an examination by a physician who could properly utilize the fourth edition.

On September 10, 1996 the Office referred appellant for a second opinion to Dr. Raymond P. Koval, a Board-certified orthopedist. On October 4, 1996 Dr. Koval examined appellant and diagnosed a partial tear of the quadriceps mechanism into the patella on the left knee. He indicated that appellant showed a permanent mild partial disability with some weakness as noted by a grade four as compared to a grade five on the opposite side and showed some quadriceps atrophy. "Based upon the A.M.A., *Guides*, there is no percent of impairment for a partial rupture of the quadriceps but in looking at the impairment of the leg muscle atrophy with his 2 cm. atrophy of the thigh plus the weakness of a 4 as compared to a 5 on the opposite side, I feel that a 10 percent ... loss of the left knee would be indicated."

The Office then referred Dr. Koval's opinion and the statement of accepted facts to Dr. Daniel Kalash, the Office medical adviser. The Office medical adviser indicated that appellant was entitled to an eight percent schedule award for an impairment to the left lower extremity. On November 21, 1996 the Office asked the Office medical adviser to clarify whether appellant was entitled to an additional schedule award of eight percent. In response, the Office medical adviser explained that appellant was not entitled to an additional award, but rather the schedule award of October 21, 1996 was for the total award.

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<sup>1</sup> A.M.A., *Guides* (4<sup>th</sup> edition 1993). The Office began using the fourth edition of the A.M.A., *Guides* effective November 1, 1993; FECA Bulletin 94-4 (issued November 1, 1993). This bulletin provides that any recalculations or previous awards that result from hearings, reconsiderations or appeals should be based on the fourth edition of the A.M.A., *Guides* effective November 1993.

By decision dated April 6, 1997, the Office determined that appellant was not entitled to an additional schedule award. On June 23, 1997 appellant requested a review of the written record by an Office hearing representative.<sup>2</sup>

By decision dated August 28, 1997, the Office hearing representative found that appellant failed to present medical evidence sufficient to warrant an augmented schedule award. Although Dr. Post diagnosed a 25 percent loss, the hearing representative determined that the physician's opinion was of no probative value as it was based on the third edition of the A.M.A., *Guides*, not on the fourth edition. The hearing representative further determined that neither Dr. Koval nor the Office medical adviser found an impairment greater than the original 12 percent. Consequently, the Office hearing representative found that there was no evidence of error in the Office medical adviser's calculation of the percentage of appellant's impairment.<sup>3</sup>

The Board finds that appellant has no more than a 12 percent impairment of his left lower extremity.

Section 8107 of the Federal Employees' Compensation Act<sup>4</sup> provides that, if there is a 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. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants in the evaluation of permanent physical impairment. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a detailed description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This

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<sup>2</sup> In his request for review of the written record, appellant asked the Office hearing representative to review both cases of permanent damage to his left and right knees. Appellant allegedly sustained an injury to his right knee on May 8, 1982. However, as there is no evidence that the Office combined the case files, this claim involves only the schedule award for his left knee.

<sup>3</sup> The record reveals that appellant contacted the Office to inquire about the status of his case and informed a claims examiner that he never received the hearing representative's decision. On March 13, 1998 the Office resent the August 28, 1997 hearing representative's decision.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> *Lena P. Huntley*, 46 ECAB 643 (1995).

description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>6</sup>

In the instant case, Dr. Post indicated that his November 19, 1993 examination revealed quadriceps atrophy with a palpable gap present related to the quadriceps insertion into the patella. He also noted that extension lag was present and flexion was limited and found a 25 percent loss of the use of his left knee due to the injury. Dr. Post stated that his determination was based on the third edition of the A.M.A., *Guides*. The Board has held that when an attending physician's report gives an estimate of permanent impairment that is not based on a proper application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly used the A.M.A., *Guides*.<sup>7</sup> Because Dr. Post failed to utilize the fourth edition or provide measurements conforming to evaluation criteria contained in the fourth edition, the Office properly referred the case to Dr. Koval for a second opinion. He noted that his examination revealed a defect in the quadriceps apparatus into the left patella in the supralateral aspect. Dr. Koval stated that appellant could hold the left knee in full extension against resistance. Appellant had a grade four as compared to a grade five on the opposite side. There was full flexion and extension of the knee and there was a two-centimeter atrophy of the left thigh as compared to the right. Based upon the A.M.A. *Guides*, he found a 10 percent loss of the left knee. The Office medical adviser then compared Dr. Koval's findings with the A.M.A. *Guides* and found that based on impairments from leg muscle atrophy (Table 37 page 77), a 2 percent atrophy revealed a lower extremity impairment between 8 to 13 percent. The Office medical adviser found an 8 percent impairment and, as appellant had been previously awarded an award for a 12 percent impairment, the Office found that appellant was not entitled to an augmented schedule award.

The Board concludes that, in the present case, since Dr. Post failed to utilize the fourth edition of the A.M.A. *Guides*, the Office properly relied on the description of the impairment provided by Dr. Koval and the Office medical adviser. A review of their findings reveals that they properly applied the A.M.A., *Guides*. As there is no other medical evidence of record revealing an impairment greater than 12 percent, the Office properly found that an augmented schedule award for the permanent loss of use of his left lower extremity was not warranted.

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<sup>6</sup> *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

<sup>7</sup> *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

The decision of the Office of Workers' Compensation Programs dated August 28, 1997 is affirmed.

Dated, Washington, D.C.  
February 2, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member