

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. BLEVINS and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 98-2400; Submitted on the Record;
Issued February 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has more than a two percent permanent impairment of his left leg for which he received a schedule award.

The Board finds that appellant did not meet his burden of proof to establish that he has more than a two percent permanent impairment of his left leg for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,² including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.³

Section 8107 of the 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.⁴ 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 of Workers' Compensation Program has adopted the American Medical Association, *Guides to the*

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

Evaluation of Permanent Impairment (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

On February 11, 1998 appellant, then a 54-year-old mailhandler, sustained an employment-related meniscus tear of his left knee. In March 1998 appellant underwent a partial medial meniscectomy of his left knee. By decision dated July 28, 1998, the Office granted appellant a schedule award for a two percent permanent impairment of his left leg. The award ran for 5.76 weeks from May 11 to June 20, 1998. The Office based its award on a July 15, 1998 report in which an Office medical adviser applied the findings of Dr. Philip R. Hardy, an attending Board-certified orthopedic surgeon, to the standards of the A.M.A., *Guides*.

The Board finds that the Office medical adviser properly determined that appellant had a two percent permanent impairment of his left leg. The Office medical adviser correctly noted that appellant was entitled to a two percent impairment rating due to his partial medial meniscectomy.⁶ He also correctly noted that appellant's 115 degrees of left knee flexion would not entitle him to any impairment rating.⁷

The record contains a May 11, 1998 report in which Dr. Hardy indicated that appellant had a 19 percent impairment of his left lower extremity comprised of a 5 percent impairment due to his partial medial meniscectomy combined with a 15 percent impairment due to range of motion of his left knee to 115 degrees. However, as noted above, appellant's partial medial meniscectomy would entitle him to a 2 percent impairment rating and his left knee range of motion to 115 degrees would not entitle him to any impairment rating. The opinion of Dr. Hardy regarding the extent of appellant's permanent impairment is of limited probative value in that Dr. Hardy failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with the standards contained in the A.M.A., *Guides* adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.⁸ As the report of the Office medical adviser provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.⁹

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁶ See A.M.A., *Guides* 85, Table 64.

⁷ *Id.* at 78, Table 41.

⁸ See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

⁹ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

The decision of the Office of Workers' Compensation Programs dated July 28, 1998 is affirmed.

Dated, Washington, D.C.
February 8, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member