

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY REGIEC, claiming as executrix of the estate of WILLIAM A. URELL and U.S. POSTAL SERVICE, POST OFFICE, Toms River, NJ

*Docket No. 98-2596; Submitted on the Record;
Issued March 21, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the employee had more than a 13 percent permanent impairment of his right lower extremity for which his estate received a schedule award.

The Board has duly reviewed the case on appeal and finds that the employee had no more than a 13 percent permanent impairment of his right lower extremity.

The employee, a distribution clerk, filed a claim on March 12, 1994 alleging that he injured his right knee in the performance of duty. The Office of Workers' Compensation Programs accepted his claim for strain of the right knee. The employee requested a schedule award.¹ By decision dated September 4, 1997, the Office granted his estate a schedule award for a 13 percent permanent impairment of the employee's right lower extremity. Appellant requested an oral hearing and, by decision dated May 26, 1998, the hearing representative affirmed the Office's September 4, 1997 decision.

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants the Office adopted the American Medical

¹ The employee committed suicide in June 1997 and appellant was duly appointed as executrix of his estate.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

Association, *Guides to the Evaluation of Permanent Impairment*⁴ as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁵

In this case, the employee submitted a report dated May 22, 1996 from Dr. David Weiss, an osteopath, who performed a physical examination and correlated his findings with the A.M.A., *Guides*. He concluded that the employee had three centimeters of quadriceps atrophy for a 13 percent impairment.⁶ Dr. Weiss then determined that the employee's physical examination demonstrated crepitation. He applied Table 62 of the A.M.A., *Guides* to determine that the employee had a 5 percent impairment.⁷ Dr. Weiss concluded that the employee's impairment rating was 18 percent.

The Office medical adviser reviewed this report and found that the employee was not entitled to an impairment rating for crepitation as Table 62 was not utilized in accordance with Office Bulletin No. 96-17.⁸ He concluded that the employee had a 13 percent impairment due to quadriceps atrophy.

The A.M.A., *Guides* specifically state that roentgenographic grading is a more objective and valid method for assigning impairment estimates secondary to arthritis than physical findings, such as the range of motion or joint crepitation. The A.M.A., *Guides* state, "Crepitation is an inconstant finding that depends on factors such as forces on joint surfaces and synovial fluid viscosity."⁹ The Board has held that in order to determine impairment due to arthritis or crepitation of a knee joint under Table 62 of the A.M.A., *Guides* a "sunrise view" x-ray must be examined as recommended by the A.M.A., *Guides*.¹⁰ Therefore, as appellant has not submitted sufficient medical evidence in accordance with the A.M.A., *Guides* and Board precedent to establish that the employee had impairment due to joint crepitation or arthritis, the Office properly found that the employee had no more than a 13 percent permanent impairment of his right lower extremity.

⁴ A.M.A., *Guides* (fourth edition 1993).

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ A.M.A., *Guides* at 77, Table 37.

⁷ A.M.A., *Guides* at 83.

⁸ Federal (FECA) Bulletin No. 96-17 (September 1996).

⁹ A.M.A., *Guides* at 82.

¹⁰ A.M.A., *Guides*, *id.*; *Thomas L. Iverson*, 50 ECAB ____ (Docket No. 98-446, issued August 5, 1999); *John M. Gonzales, Jr.*, 48 ECAB 357 (1997).

The May 26, 1998 and September 4, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
March 21, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member