

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. JOHNSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Buffalo, NY

*Docket No. 00-1626; Submitted on the Record;
Issued December 5, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than a 50 percent permanent impairment of the right lower extremity for which she received a schedule award.

On November 18, 1994 appellant, then a 60-year-old licensed practical nurse-secretary, filed traumatic injury claim (Form CA-1), alleging that she twisted her right knee when she stepped off a step. The case was accepted for torn right medial meniscus and compensation paid, authorized arthroscopic debridement of the right medial compartment authorized and authorized medial unicondylar joint replacement of the right knee. Appellant filed a recurrence claim on April 15, 1996, which was accepted by the Office of Workers' Compensation Programs. On October 3, 1996 appellant was placed on the automatic rolls for temporary total disability. Appellant accepted an offer of a modified light-duty position on December 8, 1998.

On June 1, 1999 appellant filed a claim for a schedule award.

In a report dated July 12, 1999, Dr. John H. Ring, Jr., an attending Board-certified orthopedic surgeon, noted no fluid in the right knee and:

“Motion of the right knee is 0 to 76 degrees, the left 0 to 96 degrees. As far as the right knee is concerned, she has 2 degrees of valgus and 4 degrees of valgus on the left. Her right knee is quite stable. She has an anterior Drawer sign of two plus. She has no medial or lateral instability and no posterior Drawer sign.”

Dr. Ring concluded that appellant suffered from a 50 percent right lower extremity impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹ He noted the following:

“She has pain walking and on stairs at this gives her 30 points. Range of motion gives her 15 points. Stability 5 points. This makes a total of 65 points. On the other hand, the flexion contracture is 2 points, extension of the leg is 5 and alignment is 0 for a total of 7. Subtracting 7 from 65 gives 58 points.”

In a January 19, 2000 report, Dr. Ring noted physical findings of no right knee fluid, 0 to 76 degrees of motion in the right knee, an anterior drawer sign of two plus, a negative posterior drawer sign and some grinding under the patella on flexion and extension. As to a disability rating, the physician noted:

“Using the medical guidelines of the State of New York for the Workers’ Compensation Board, on [p]age 21, it will be noted that the total knee replacement is equal to 35 percent to 40 percent loss of use of the leg. Add 10 percent to 15 percent for bone loss and final schedule is 50 percent to 55 percent.”

In a letter dated February 11, 2000, the Office advised Dr. Ring that it was unable to utilize his January 19, 2000 disability rating as it is based upon New York State Workers’ Compensation Guidelines and not the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, the standard used by the Office.

In a report dated February 17, 2001, Dr. Ring calculated appellant’s disability rating utilized the A.M.A., *Guides* to arrive at a 50 percent impairment of the right lower extremity. In reaching this decision, the physician stated:

“I calculated this on the basis of first going to Table 66 at [p]age 3-88 for pain it would be moderate and occasional and be 20 points. Under range of motion, the patient’s range of motion is 0 to 80 degrees which would be 16 points. On stability (anterior-posterior), would be 5 to 9 [millimeters] would be 5 points. Medial-lateral would be less than 5 degrees and would be 15 points. The patient has an excellent alignment and no leg extension lag and no flexion contracture for a total of 56 points.

“The (sic) going to [p]age 3-85 under knee and total knee replacement a point total of 56 points would put the patient in a fair result which goes from 50 to 84 points. The whole person would be 20 and the lower extremity would be 50 percent impairment.”

In a report dated March 3, 2000, the Office medical adviser reviewed Dr. Ring’s February 17, 2000 report and concurred with his calculations.

¹ A.M.A., *Guides*, (4th ed. 1993).

By decision dated March 6, 2000, the Office granted appellant a schedule award for a 50 percent permanent impairment of the right lower extremity.

The Board finds that appellant has not established that she has more than a 50 percent permanent impairment of the right lower extremity.

Section 8107 of the Federal Employees' Compensation Act² provides that, if there is permanent disability involving the loss or loss of use of a specific enumerated member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³ The Act does not specify the manner by 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 has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴

In the instant case, the Office awarded 50 percent right lower extremity impairment under the schedule was supported by the July 12, 1999 and February 17, 2000 opinions of Dr. Ring, which was supported by the Office medical examiner. The earlier January 19, 2000 report by Dr. Ring in which he attributed a 55 percent impairment rating was based upon New York State medical guidelines and not the A.M.A., *Guides*. Dr. Ring utilized the A.M.A., *Guides* in his February 17, 2000 report when he calculated that appellant had a 50 percent impairment in her right lower extremity. There is no new evidence in the record to support appellant's requested increase. Appellant has not provided a rationalized medical report to establish greater permanent impairment under the A.M.A., *Guides*. The Board finds that appellant has no more than a 50 percent impairment of the right lower extremity for which she received a schedule award.⁵

² 5 U.S.C. §§ 8101-8193; § 8107.

³ *Id.* This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁴ *Mary L. Henninger*, 51 ECAB _____ (Docket No. 00-552, issued June 20, 2001); 20 C.F.R. § 10.404 (1999). The Office first utilized *A Guide to the Evaluation of Permanent Impairment of the Extremities and Back*, published in *The Journal of the American Medical Association*, Special Edition, February 15, 1958. From 1958 until 1971 a series of 13 *Guides* was published in the *Journal of the American Medical Association*. The American Medical Association published the first hardbound compilation edition of the *Guides* in 1971, which revised the previous series of *JAMA Guides*.

⁵ 5 U.S.C. § 8197(c); 20 C.F.R. § 10.304; *George E. Williams*, 44 ECAB 530 (1993).

The March 6, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 5, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member