U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY WOLFF and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

Docket No. 00-1935; Submitted on the Record;
Issued January 7, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 17 percent permanent impairment of the right lower extremity, for which he received a schedule award.

On June 9, 1987 appellant, then a 37-year-old mailhandler, sustained an injury to his right knee. On July 13, 1988 the Office of Workers' Compensation Programs accepted appellant's claim for internal derangement of the right knee. On October 27, 1997 appellant filed a claim for a schedule award.

In support of his claim, appellant submitted an August 29, 1997 report from Dr. Potash, a Board-certified surgeon, who noted appellant's history of injury and treatment, which included two arthroscopic surgeries on his right knee, one in 1987 and one in 1990.[1]

Dr. Potash opined that the work-related injury of June 19, 1987 was the competent producing factor for the patient's subjective and objective findings. He found that appellant had a range of motion deficit of the right knee of 10 percent according to Table 41, page 78 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and 50 percent for arthritis of the right knee according to Table 62, page 83 of the A.M.A., *Guides*. Additionally, Dr. Potash found that for motor strength deficit right knee flexors, appellant had a 12 percent impairment according to Table 39, page 77 of the A.M.A., *Guides* and for motor strength deficits, right knee extensors, appellant had a 12 percent impairment according to Table 39, page 77 of the A.M.A., *Guides*. He found that using the combined values, appellant had an impairment of 65 percent of the right lower extremity.

[1] He also noted previous injuries including one in 1965 when he was hit by a car, an accident in 1977 when he was hit by a car, a 1965 left femur surgery, 1977 inguinal herniorrhaphy, 1987 right knee surgery and 1993 right inguinal herniorrhaphy.

The Office subsequently referred appellant to an Office medical adviser who in a May 13, 1998 report determined that appellant had a 24 percent impairment of the right lower extremity. In his report, the Office medical adviser determined that, appellant did not have any percentage of impairment according to Table 41, page 78 of the A.M.A., *Guides*. He found a 12 percent impairment, based on Table 39, page 77 of the A.M.A., *Guides.*

The Office found that a conflict existed and referred appellant to Dr. Joseph C. Andolino, a Board-certified orthopedic surgeon. In his report dated July 7, 1998, Dr. Andolino reviewed appellant's history of injury and treatment. He opined that appellant's disability due to the work injury had not resolved. Using Table 64 on page 3/85 of the A.M.A., *Guides,* he determined that appellant's menisectomy, medial partial, was 2 percent and the cruciate or collateral ligament laxity, moderate, was 17 percent for a 17 percent impairment of the right lower extremity.

Accordingly, on December 18, 1998 the Office granted appellant a schedule award for a 17 percent permanent loss of use of his right lower extremity. The award covered 48.96 weeks from June 19, 1998 to May 27, 1999.

On December 21, 1998 appellant's representative requested a hearing, which was held on July 30, 1999.

In a February 1, 2000 decision, an Office hearing representative found that appellant had no more than a 17 percent permanent loss of use of the right lower extremity.

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

Section 8107 of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.

The Office properly determined that there was a conflict in the medical evidence between the Office medical adviser, who found a 24 percent impairment of the right lower extremity, and appellant's physician, Dr. Potash, who found that appellant had a 65 percent impairment of the

[2] 5 U.S.C. § 8107.

[3] *Id.*

right lower extremity. The Office properly referred appellant to an impartial medical examiner, Dr. Andolino, to serve as an impartial medical specialist.[4]

The Board finds that Dr. Andolino did not adequately explain how his determination of a 17 percent impairment was reached in accordance with the relevant standards of the A.M.A., *Guides.* While Dr. Andolino noted that appellant had multiple surgical scars, tenderness on the right side and osteoarthritis which were related to the work injury, he did not cite to tables or charts to provide a rating determination. For instance, he did not explain why appellant would or would not be entitled to a rating for the loss of range of motion, arthritis or motor strength. Additionally, he did not explain why he did not find any impairment based on any atrophy or deformity or decreases in strength or disturbance of sensation. The record reflects that both the Office medical adviser and appellant's physician agreed that appellant had a 24 percent impairment due to muscle weakness flexion and extension.

Additionally, Dr. Andolino did not provide any rationale for the percentage of impairment selected. For example, he opined that appellant had an anterior cruciate ligament with total disruption, however, he checked the moderate rating of 17 percent, with no explanation. Dr. Andolino also checked the rating for partial meniscectomy for a 2 percent impairment, which, combined with the moderate rating of 17 percent, would equate to 19 percent impairment. He did not explain his selection or why he was providing only a 17 percent impairment instead of a 19 percent impairment.

In a situation where the Office secures an opinion from an impartial medical specialist for the purposes of resolving a conflict in the medical evidence and the opinion requires further clarification or elaboration, the Office has a responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report and have a proper evaluation done.[5]

Therefore, to resolve the conflict in the medical opinions, the case will be remanded to the Office for referral for a supplemental report regarding the extent of appellant's left and right upper extremity impairment as determined in accordance with the relevant standards of the A.M.A., *Guides.* If Dr. Andolino is unwilling or unable to clarify and elaborate on his opinion, the case should be referred to another impartial medical specialist.[6] After such development as the Office deems necessary, an appropriate decision should be issued regarding the extent of appellant's right lower extremity impairment.

The decision of the Office of Workers' Compensation Programs dated February 1, 2000 is hereby set aside and the case is remanded for further action consistent with this opinion.

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[4] Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a). When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence. *William C. Bush,* 40 ECAB 1064 (1989).

[5] *Albert Vervalde,* 36 ECAB 233 (1984).

[6] *See Harold Travis,* 30 ECAB 1071, 1078-79 (1979).

Dated, Washington, DC
January 7, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member