

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ROBERT L. OWEN and U.S. POSTAL SERVICE,  
POST OFFICE, Buffalo, NY

*Docket No. 02-1515; Submitted on the Record;  
Issued February 11, 2003*

---

DECISION and ORDER

Before COLLEEN D. KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has more than 75 percent permanent impairment of his right lower extremity for which he received a schedule award.

Appellant, a 44-year-old letter carrier filed a notice of traumatic injury on December 31, 1993 alleging that he slipped on ice in the performance of duty injuring his right knee. The Office of Workers' Compensation Programs accepted appellant's claim for right knee sprain and authorized surgery. Appellant requested a schedule award and by decision dated May 9, 1995, the Office granted appellant a schedule award for two percent permanent impairment of his right lower extremity. Appellant underwent additional surgeries including a total knee arthroplasty on April 18, 2000.

Appellant alleged that he developed back pain due to his right knee condition on November 5, 1998. The Office expanded appellant's claim to include a back condition on September 21, 2001.

By decision dated September 24, 2001, the Office granted appellant an additional schedule award for 73 percent permanent impairment of his right lower extremity. Appellant requested and received a lump sum payment for this amount. His attorney alleged that appellant was entitled to additional impairment rating due to his back condition resulting in impairment to both his lower extremities as well as his penis. By decision dated April 12, 2002, the Office denied modification of its September 24, 2001 decision.

The Board finds that appellant has no more than 75 percent permanent impairment of his right lower extremity for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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 regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office referred appellant to Dr. Richard J. Dellaporta, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion evidence regarding the causal relationship between appellant's back condition and his accepted knee injuries. In his August 14, 2001 report, Dr. Dellaporta opined that appellant's back condition was due to his leg length discrepancies and provided the impairment rating for appellant's right lower extremity. Dr. Dellaporta reported that appellant limped and walked with a cane. Appellant's thigh circumference was 59.3 centimeters on the right and 60.1 centimeters on the left. He found that appellant's right leg was one centimeter shorter than his left. Appellant's right knee flexed to 110 degrees with pain and he lacked 10 degrees of extension actively and 5 degrees passively. The right knee had mild to moderate swelling and effusion. Appellant had full hip flexion as well as full motion at the left knee. Dr. DellaPorta found that appellant had reached maximum medical improvement in the right knee and opined that appellant had 75 percent impairment to his right knee based on the Fifth Edition of the A.M.A., *Guides*. Dr. DellaPorta utilized Tables 17-33 and 17-35,<sup>3</sup> the Diagnosis Based Estimates finding that appellant had 10 points for continual moderate pain; 47 points for range of motion, and 0 points for stability giving a total of 57 points, with subtraction of 2 points for flexion contracture, 10 points for extensor lag and 0 points for alignment giving a total subtraction of 12 points. He concluded that appellant had 45 points which was 75 percent impairment of the right lower extremity in accordance with Table 17-33.<sup>4</sup> The district medical director reviewed Dr. DellaPorta's report on September 20, 2001 and concurred with his rating. There is no other medical evidence in conformance with the provisions of the Act establishing that appellant has more than 75 percent impairment of his right lower extremity for which he received a schedule award.

Appellant reported low back pain which waxed and waned with some numbness in the right lower leg. Physical examination revealed normal lumbar lordosis and marked decreased in extension with mild to moderate decrease in rotation. Light touch is altered in the right lateral lower leg and the right foot and normal in the left lower extremity. Dr. DellaPorta diagnosed low back pain secondary to his altered gait. He stated that appellant had five to eight percent impairment of the whole person due to findings at the low back in accordance with Table 15-3.<sup>5</sup>

---

<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> A.M.A., *Guides*, 549, Table 17-35.

<sup>4</sup> *Id.* at 547, Table 17-33.

<sup>5</sup> *Id.* at 384, Table 15-3.

This table provides impairment of the whole person due to clinical history and examination findings compatible with a specific injury. The district medical director reviewed Dr. DellaPorta's report and found that there was nothing in his report to indicate additional impairment to appellant's lower extremities or penis due to the accepted condition of lumbar strain. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.<sup>6</sup> Appellant has not submitted any medical evidence to support his claim of additional impairment to an accepted scheduled member due to his back condition, therefore, he has not established that he is entitled to a schedule award for more than 75 percent permanent impairment of his right lower extremity.

The April 12, 2002 and September 24, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
February 11, 2003

Colleen D. Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

---

<sup>6</sup> *George E. Williams*, 44 ECAB 530, 533 (1993).