U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TYRONE WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Bethesda, MD

Docket No. 03-1006; Submitted on the Record;
Issued September 29, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than a two percent permanent impairment of the right lower extremity for which he received a schedule award.

On August 23, 1995 appellant, then a 39-year-old letter carrier filed a traumatic injury claim alleging that on August 17, 1995 he injured his right knee when he tripped in a hole while crossing a yard and fingering mail. The Office of Workers' Compensation Programs accepted the claim for right knee strain and authorized arthroscopy surgery performed on February 15, 1996. Appellant received appropriate wage-loss compensation and medical treatment.

Appellant requested a schedule award on August 8, 2001. The Office thereafter requested that appellant's treating physician, Dr. Irving Guterman, a Board-certified orthopedic surgeon, provide an opinion regarding his work-related impairment.

In a report dated October 1, 2001, Dr. Guterman indicated that appellant reached maximum medical improvement on or about January 1, 1997 and outlined his findings regarding appellant's right knee impairment. Dr. Guterman stated:

> "Using the worksheet, Figure 1710 and Box 1701, atrophy of the thigh of 2 cm [centimeters] is equivalent to 3 percent impairment of the whole person or 8 percent impairment of the lower extremity. A diagnosis based estimate of the knee (partial lateral meniscectomy) one percent impairment of the whole person and two percent impairment of the lower extremity. There is no other impairment listed for the other categories. Thus, a total of 4 percent impairment of the whole person and 10 percent impairment of the lower extremity are obtained."

On December 20, 2001 an Office medical adviser reviewed Dr. Guterman's findings and determined that appellant actually had a two percent impairment of the right lower extremity with a date of maximum medical improvement of February 15, 1997. The Office medical

adviser indicated that he utilized Table 17-33 on page 546 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) to determine the impairment.

On November 12, 2002 another medical adviser contracted by the Office reviewed the case and agreed that, due to appellant's partial meniscectomy of the right knee, he was entitled to a two percent impairment of the right lower extremity. The second Office medical adviser indicated a date of maximum medical improvement of July 22, 2002.

The Office referred the case to a second opinion examiner to verify appellant's extent of impairment and date of maximum medical improvement. In a report dated July 22, 2002, Dr. Robert F. Draper, a Board-certified orthopedic surgeon, reviewed the statement of accepted facts, appellant's medical record and noted his findings. He diagnosed torn right lateral meniscus and hypertrophic synovium, right knee and status post arthroscopic partial right lateral meniscectomy and resection of hypertrophic synovium of the right knee. Dr. Draper further noted that the date of maximum medical improvement was February 15, 1997, one year after the operation of the right knee. The second opinion physician calculated appellant's impairment as follows:

> "Using Table 17-33, 'Impairment Estimate for Certain Lower Extremity Impairments,' page 546. A partial meniscectomy gives a two percent impairment of the lower extremity. This impairment rating cannot be added to an impairment for loss of flexion. There was a loss of flexion in the knee as documented under the examination. However, according to 17-2 '[A.M.A.,] Guides to the Appropriate Accommodation of Evaluation Methods,' page 526, the diagnosis-based estimate cannot not be added to the range of motion to obtain additional impairment. Consequently, my conclusion is that the patient has a two percent impairment of the right lower extremity associated with this work injury."

By decision dated December 3, 2002, the Office issued appellant a schedule award for a two percent permanent impairment of the right lower extremity. The period of the award ran for 7.76 weeks from February 15, 1997, the determined date of maximum medical improvement through March 27, 1997.

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

The schedule award provisions of the Federal Employees' Compensation Act[1] and its implementing federal regulation[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[3] However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] 5 U.S.C. § 8107(c)(19).

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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[4]

In this case, the Office medical advisers agreed with Dr. Guterman, a Board-certified orthopedic surgeon and appellant's treating physician, and Dr. Draper, also a Board-certified orthopedic surgeon and second opinion physician, that a diagnosis-based estimate of the knee for a partial lateral meniscectomy yields a two percent impairment of the lower extremity.[5] Dr. Guterman also provided in his report that appellant had eight percent impairment based on atrophy. Dr. Draper however noted in his July 22, 2002 report that additional impairment cannot be obtained by adding to the diagnosis-based impairment rating of two percent of the right lower extremity, according to the method of evaluation outlined in Table 17-2 on page 526 of the A.M.A., *Guides*. Dr. Draper reached this conclusion even given the fact that findings showed a loss of flexion in the knee post surgery. The Office medical advisers reviewed the evidence of record, applied the medical findings to the appropriate tables and figures of the A.M.A., *Guides* and concluded that appellant has no more than a two percent permanent impairment of the right lower extremity.

The Board notes that the examining physician, Dr. Guterman, found a two centimeter atrophy of the thigh which is an eight percent lower extremity impairment. Dr. Guterman also found a diagnosis based impairment of partial lateral meniscectomy which is 2 percent or a total impairment of the lower extremity of 10 percent. Because impairments of the lower extremities are assessed under "Anatomic," "Functional" or "Diagnosis based," and Dr. Guterman used both anatomic and diagnosis based, the Office excluded the much larger eight percent anatomic-atrophy impairment, and awarded appellant the much less two percent diagnosis-based impairment without giving a reason for selecting the lower impairment. Under section 17.2 of the A.M.A., *Guides*,[6] the following is noted:

> "If more than one method can be used, the method that provides the higher rating should be used."

The evaluating physician should select the most appropriate method under Table 17-2 when the two methods as in the instant case may not be combined and choose the most clinically accurate method.

Accordingly, the schedule award dated December 3, 2002 is set aside and remanded to the Office for an explanation as to why the lower diagnosis-based two percent rating was selected over the eight percent anatomic rating.

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[4] *See* 20 C.F.R. § 10.404 (1999).

[5] A.M.A., *Guides* 546, Table 17-33 (5th ed. 2001). When such a diagnosis-based impairment rating is applied, it is generally not appropriate to calculate additional impairment based on anatomic or functional based methods (such as limitations related to strength or range of motion). *Id*. at 525-37.

[6] A.M.A., *Guides*, page 527.

The decision of the Office of Workers' Compensation Programs dated December 3, 2002 is set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC
September 29, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member