



impairment causally related to the accepted April 22, 1988 aggravation of osteoarthritis in his knees.<sup>1</sup> The law and the facts as set forth in the previous Board decision are incorporated herein by reference.

By letter dated February 17, 2004, appellant, through his attorney, requested reconsideration, and submitted a February 10, 2004 medical report from Dr. George L. Rodriguez, a Board-certified physiatrist. In this report, Dr. Rodriguez provided a history that on approximately August 20, 1988 appellant could no longer tolerate bilateral knee pain. He noted appellant's medical treatment, his return to light-duty work after right knee surgery and his social and occupational background. Dr. Rodriguez provided his findings on physical and neurological examination and a detailed review of medical records. He diagnosed bilateral degenerative joint disease of the knees status post right knee chondroplasty and meniscectomy, gait abnormality and excessive bilateral joint knee pain secondary to an August 20, 1988 employment injury.<sup>2</sup> Dr. Rodriguez opined that appellant suffered significantly from bilateral knee pain and that he reached maximum medical improvement on or about August 14, 2001. He found no evidence of symptom magnification or nonphysiological complaints and stated that based on his examination and review of the medical records, the diagnosed conditions were attributable to the "April 22, 1988" employment injury. Regarding the right lower extremity, Dr. Rodriguez determined that appellant had a 40 percent impairment due to moderate to severe arthritis based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*) 544, Table 17-31 and a 7 percent impairment for a total meniscectomy based on the A.M.A., *Guides* 546, Table 17-33, totaling a 44 percent impairment. Regarding the left lower extremity, Dr. Rodriguez found that appellant had a seven percent impairment for mild arthritis based on the A.M.A., *Guides* 544, Table 17-31. He determined that appellant had a three percent impairment for pain utilizing the A.M.A., *Guides* 573, 575, section 18.3d(C).

In a decision dated May 24, 2004, the Office denied appellant's request for modification based on a merit review of his claim. The Office found that the evidence submitted was insufficient to establish that he sustained any impairment causally related to his April 22, 1988 employment injury.

### **LEGAL PRECEDENT**

A claimant seeking compensation under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.<sup>3</sup> Section 8107 provides that, if there is permanent disability

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<sup>1</sup> The Board notes that on May 31, 1991 appellant, then a 55-year-old letter carrier, filed an occupational disease claim for osteoarthritis of the weight-bearing joints of both knees which he realized was either caused or aggravated by factors of his employment on April 22, 1988. The Office accepted the claim for aggravation of osteoarthritis of both knees. Docket No. 03-32 (issued March 4, 2003).

<sup>2</sup> It appears that Dr. Rodriguez inadvertently stated that the diagnosed conditions were caused by an August 20, 1988 employment injury rather than the accepted April 22, 1988 employment injury as he later indicated in his report that these conditions were caused by the accepted employment injury.

<sup>3</sup> *Edward W. Spohr*, 54 ECAB \_\_\_\_ (Docket No. 03-1173, issued September 10, 2003); *Nathaniel Milton*, 37 ECAB 712 (1986).

involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>4</sup> The schedule award provision of the Act<sup>5</sup> and its implementing federal regulation<sup>6</sup> sets 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, the Office has adopted the A.M.A., *Guide* (5<sup>th</sup> ed. 2001) as the uniform standard applicable to all claimants.<sup>7</sup>

### **ANALYSIS**

The Office accepted that appellant aggravated his osteoarthritis in both knees while in the performance of his duties as a letter carrier. As appellant seeks a schedule award in this case, he has the burden to establish that the employment factors caused permanent impairment of his lower extremities. He has not met his burden of proof.

While Dr. Rodriguez reported that appellant had a 44 percent impairment of the right lower extremity, a 7 percent impairment of the left lower extremity and a 3 percent impairment for pain, he did not state whether or discuss how the work factors caused or contributed to a permanent impairment of appellant's lower extremities. Dr. Rodriguez' report does not indicate any awareness that appellant began working limited duty in 1988 and stopped working altogether in 1996. The current claim for schedule award was filed in February 2000. There is no evidence of record explaining how appellant's lower extremities impairment was caused or aggravated by his employment. Therefore, the Office properly denied his schedule award claim.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he has a permanent impairment of his lower extremities causally related to factors of his federal employment.

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<sup>4</sup> 5 U.S.C. § 8107(a).

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 24, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 29, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member