United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 06-942**
	)	**Issued: February 5, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Kankakee, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2006 appellant filed a timely appeal from the January 4 and March 2, 2006 merit decisions of the Office of Workers' Compensation Programs, which denied modification of his schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the schedule award.

ISSUE

The issue is whether appellant has more than a 37 percent permanent impairment of his right lower extremity.

FACTUAL HISTORY

On May 12, 2000 appellant, then a 56-year-old city letter carrier, alleged an injury in the performance of duty: "Walking down stairs -- the stair I was on collapsed." The Office accepted his claim for resolved mild sprain of the left ankle and right knee. The Office authorized a total right knee replacement.

Appellant filed a claim for a schedule award. On March 4, 2004 Dr. Thomas L. Sutter, Board-certified in family medicine and specializing in occupational medicine, evaluated the right lower extremity. Using the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), he awarded 50 points for pain, 20 points for range of motion and no points for stability. He noted that these 70 points represented a "Fair" result following the right knee replacement and a 50 percent permanent impairment of the lower extremity.

On April 12, 2004 the Office medical adviser reviewed Dr. Sutter's evaluation. Using the same tables as Dr. Sutter, he reported that appellant had a "Good" result following his total right knee replacement, which represented a 37 percent permanent impairment of the lower extremity.

On August 12, 2004 the Office issued a schedule award for a 37 percent permanent impairment of the right lower extremity. On June 16, 2005 an Office hearing representative remanded the case for clarification from the Office medical adviser: "[He] should explain the reasons he determined that the claimant had a good versus a fair result following the knee replacement surgery."

On July 11, 2005 the Office medical adviser explained that he could find no mention of instability in the reports of the surgeon, the physical therapist or Dr. Sutter. Because appellant's knee appeared stable, the medical adviser added 25 points to Dr. Sutter's 70, for a total of 95 points and a "Good" result from knee replacement.

On September 26, 2005 the Office denied an increased schedule award based on the opinion of the Office medical adviser. On January 4 and March 2, 2006 the Office denied modification of this decision, after reviewing August 29, 2005 and January 25, 2006 reports from Dr. Sutter reaffirming his original rating. The Office noted that these reports did not address the knee stability issue.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[1] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[2]

ANALYSIS

Table 17-33, page 547 of the A.M.A., *Guides* estimates impairment of the lower extremity due to total knee replacement. Knee replacement results may be "Good," "Fair" or

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the fifth edition of the A.M.A., *Guides*.

"Poor," depending on the point total obtained from Table 17-35, page 549. The point total is the sum of the points of the first three categories (pain, range of motion, stability) minus the sum of the points in the last three categories (flexion contracture, extension lag, alignment).

In the first three categories, more points mean a better result. This is a critical feature of the point system because it accounts for the different ratings appellant received. In the pain category, for example, the absence of pain is worth 50 points and severe pain is worth 0. If a physician awards no points for pain, it means there is pain to the greatest degree. There is no ambiguity here. Dr. Sutter, the specialist in occupational medicine, indicated that appellant had no pain and, therefore, appropriately awarded 50 points.

In the range of motion category, every 5 degrees of motion receives 1 point, up to 25 points. Again there is no ambiguity. Dr. Sutter reported 100 degrees of motion and appropriately awarded 20 points.

The remaining issue arises in the third category: stability. Anteroposterior movement less than 5 millimeters (mm) is worth 10 points, while movement greater than 9 mm (greater instability) is worth none. Mediolateral movement of 5 degrees is worth 15 points, while movement greater than or equal to 15 degrees (greater instability) is again worth none. Dr. Sutter reported no points in this category, but he did not make clear whether he meant that appellant's knee was stable or whether he meant -- technically consistent with zero points -- that appellant's knee was unstable to the greatest degree.

As the Office medical adviser observed, the medical record reflects no postsurgical complaint or finding of instability. On the operating table, the 10 mm semiconstrained tibial bearings gave full extension and good medial to lateral stability, good contact at 90 degrees of flexion and good anterior to posterior stability. The surgeon saw appellant several times following the surgery and made no mention of instability. On November 24, 2003 when the surgeon reported maximum medical improvement, he noted that appellant was doing well and functioning at work without difficulty. Gait was normal, active extension was full and there was no localized tenderness or swelling. Finally, when Dr. Sutter examined appellant on March 4, 2004, he made no mention of any joint instability.

The only evidence that possibly shows a complaint of instability is a notation on a copy of Table 17-35: "shift occasionally sideways." The best interpretation is that Dr. Sutter discounted this complaint, as he reported no abnormal finding on clinical examination. The medical record shows that appellant progressed well after his knee replacement. His surgeon made no mention of instability in his follow-up examinations and Dr. Sutter reported no measure or degree of movement to support the existence of instability. The Board finds that the Office medical adviser correctly awarded 25 points in the third category for a stable knee. This brings the sum of the points in the first three categories to 95.

There is no dispute about the last three categories. Dr. Sutter reported that appellant got nothing in these categories, so nothing is subtracted. The point total for appellant's knee replacement is, therefore, 95. According to Table 17-33, page 547 of the A.M.A., *Guides*,

95 points represents a "Good" result from the knee replacement and a 37 percent impairment of the right lower extremity. The Board will affirm the Office's decisions denying modification of appellant's schedule award.[3]

CONCLUSION

The Board finds that the evidence establishes no more than a 37 percent permanent impairment of appellant's right lower extremity. The Office properly applied the A.M.A., *Guides* to the weight of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the March 2 and January 4, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[3] The fewest points that can be awarded in the last three categories are seven. Subtracted from 95, this still leaves appellant with a "Good" result and 37 percent impairment. Dr. Sutter's conclusion that appellant had a "Fair" result and a 50 percent impairment does not create a conflict under 5 U.S.C. § 8123(a) because it appears he simply misapplied Table 17-35. Further, appellant has submitted no medical evidence to support anteroposterior movement greater than 9 mm and mediolateral movement of at least 15 degrees. These clinical findings, together with a sound explanation reconciling such instability with the lack of any previous instability, would be necessary to support Dr. Sutter's impairment estimate.