

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**M.O., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Pittsburg, PA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-82  
Issued: May 4, 2007**

*Appearances:*  
Jeffrey P. Zeelander, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 16, 2006 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated September 28 and October 3, 2006 finding that he had no more than nine percent permanent impairment of his right lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

On June 6, 2002 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim alleging that he strained his right knee in the performance of duty on June 4, 2002. When he went to pick up a dropped letter his right knee locked up. The Office accepted appellant's claim for right knee sprain and medial meniscus tear on August 26, 2002. Appellant underwent a

limited synovectomy of the right knee with an arthroscopic partial medial meniscectomy and abrasion chondroplasty in the lateral portion of the medial femoral condyle on September 24, 2002. The Office authorized this surgery on November 20, 2002.

In a letter dated January 21, 2004, the Office authorized appellant's attending physician, Dr. Patrick J. DeMeo, a Board-certified orthopedic surgeon, to perform an additional right knee arthroscopy. On February 13, 2004 Dr. DeMeo performed an arthroscopic lateral retinacular release. Appellant returned to work on March 29, 2004.

The Office referred appellant for a second opinion evaluation with Dr. Stephen Bailey, a Board-certified orthopedic surgeon, on December 16, 2004. In a report dated January 19, 2005, Dr. Bailey found that appellant demonstrated no weakness, atrophy and no loss of range of motion in his right lower extremity.

On March 16, 2005 Dr. DeMeo stated that appellant had reached maximum medical improvement and would continue to experience weakness in his right leg. Appellant requested a schedule award on April 24, 2005. In a letter dated July 6, 2005, the Office requested that Dr. DeMeo rate appellant's permanent impairment for schedule award purposes. Dr. DeMeo responded on September 27, 2005 and found that appellant had right lower extremity impairment of 31 percent due to weakness, atrophy and pain. He stated that appellant also had 31 percent deficit of the quadriceps as demonstrated through biodex evaluation on March 4, 2005. Dr. DeMeo noted that appellant's right quadriceps measured 20.5 inches and his left quadriceps measured 21.25 inches.

The Office referred the medical evidence to an Office medical adviser on November 9, 2005. In a report dated February 2, 2006, the Office medical adviser reviewed Dr. DeMeo's report and concluded that 0.75 inches of atrophy was equivalent to 1.8 centimeters or 8 percent impairment of the right lower extremity in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>1</sup> The Office medical adviser further noted that Dr. DeMeo based his assessment of 31 percent impairment of the lower extremity on biodex measurements, which were not considered under the A.M.A., *Guides*. He concluded that this did not constitute an appropriate impairment rating and that appellant had reached maximum medical improvement on September 27, 2005 with no more than eight percent permanent impairment of the right lower extremity.

By decision dated March 15, 2006, the Office granted appellant a schedule award for eight percent permanent impairment of his right lower extremity.

Appellant requested reconsideration on September 21, 2006 and submitted a report dated June 14, 2006 from Dr. Michael J. Platto, a physician Board-certified in physical medicine and rehabilitation, who noted appellant's history of injury and medical treatment including surgeries on September 24, 2002 and February 13, 2004. Dr. Platto performed a physical examination and reviewed appellant's April 13, 2006 x-rays. He noted that the x-ray report showed minimal narrowing of the right medial joint compartment with a cartilage height of three millimeters (mm). Dr. Platto noted that on September 24, 2002 appellant underwent an

---

<sup>1</sup> A.M.A., *Guides*, (5<sup>th</sup> ed. 2000), pg. 530, Table 17-6.

arthroscopic partial medial meniscus repair. He concluded that under the A.M.A., *Guides* it was most appropriate to evaluate appellant's impairment based on his arthritis impairment. Based on x-rays of three mm cartilage interval for the right knee, appellant had seven percent impairment of the right lower extremity.<sup>2</sup> Dr. Platto discounted an impairment rating for atrophy, muscle weakness or gait abnormality as he did not find any such impairments on examination. He also noted that appellant had two percent impairment due to the partial meniscectomy.<sup>3</sup> Dr. Platto combined these impairment ratings to find a total nine percent impairment of the right knee in accordance with the A.M.A., *Guides*.<sup>4</sup>

The Office medical adviser reviewed Dr. Platto's report on September 24, 2006 and agreed with Dr. Platto's impairment rating. The Office medical adviser noted that impairments for muscle atrophy could not be combined with those based on arthritis and diagnosis-based estimates.<sup>5</sup> He recommended an impairment rating of nine percent for schedule award purposes.

By decision dated September 28, 2006, the Office vacated the March 15, 2006 schedule award determination and found that appellant had total impairment rating of nine percent of the right lower extremity. The Office issued a schedule award on October 3, 2006 for a total of nine percent impairment of appellant's right lower extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>6</sup> and its implementing regulation<sup>7</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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses. Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>8</sup>

---

<sup>2</sup> *Id.* at 544, Table 17-31.

<sup>3</sup> *Id.* at 546, Table 17-33.

<sup>4</sup> *Id.* at 604, Combined Values Chart.

<sup>5</sup> *Id.* at *Guides*, 526, Table 17-2.

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404 (1999).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (August 2002).

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>9</sup> It is the responsibility of the evaluating physician to explain in writing why a particular method to assign the impairment rating was chosen.<sup>10</sup>

### ANALYSIS

Appellant's attending physician, Dr. DeMeo, a Board-certified orthopedic surgeon, provided a report on September 27, 2005. He concluded that appellant had 31 percent impairment of his right lower extremity due to weakness, atrophy and pain. However, Dr. DeMeo did not provide detailed findings supporting his impairment rating and did not correlate his findings with the A.M.A., *Guides*. As his report did not comport with the appropriate standards for evaluating permanent impairment under the Act, it is not sufficient to establish the 31 percent impairment of the right lower extremity as rated by the physician. Dr. DeMeo combined impairment for muscle weakness, pain and atrophy which is precluded by the cross-usage chart at Table 17.2. Therefore, his impairment rating is of diminished probative value.

The Office medical adviser reviewed Dr. DeMeo's report and found, based on the medical evidence of record, that under the A.M.A., *Guides* appellant had no more than eight percent impairment of his right lower extremity based on muscle atrophy. He further noted that Dr. DeMeo failed to support a greater impairment rating.

Following the March 15, 2006 decision granting him a schedule award based on eight percent impairment of his right lower extremity, appellant submitted a medical report from Dr. Platto, a physician Board-certified in physical medicine and rehabilitation. Dr. Platto found that x-rays demonstrated a reduced cartilage interval of three mm in appellant's right knee, resulting in seven percent impairment of the right lower extremity in accordance with the A.M.A., *Guides*.<sup>11</sup> He also noted that appellant underwent a partial medial meniscectomy on September 24, 2002, resulting in two percent impairment of the right lower extremity under the A.M.A., *Guides*.<sup>12</sup> Dr. Platto combined these impairment ratings to find a total impairment of

---

<sup>9</sup> Robert B. Rozelle, 44 ECAB 616, 618 (1993).

<sup>10</sup> Tara L. Hein, 56 ECAB \_\_\_ (Docket No. 05-91, issued April 4, 2005).

<sup>11</sup> See *supra* note 2.

<sup>12</sup> See *supra* note 3

the right lower extremity of nine percent.<sup>13</sup> The Office medical adviser concurred with this impairment rating.

The A.M.A., *Guides* permit impairment ratings for arthritis and diagnosis-based estimates to be combined together. However, neither of these impairments may be combined with an impairment rating for muscle atrophy.<sup>14</sup> There is no rationalized medical opinion evidence correlated with the A.M.A., *Guides* which supports that appellant has more than nine percent impairment of his right lower extremity for which he received a schedule award.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 3 and September 28, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 4, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

---

<sup>13</sup> See *supra* note 4.

<sup>14</sup> See *supra* note 5.