

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

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**N.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Buffalo, NY, Employer**

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**Docket No. 07-2074  
Issued: January 14, 2008**

*Appearances:*  
David W. Covino, Esq., for the appellant  
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 August 6, 2007 appellant filed a timely appeal from the July 17, 2007 merit decision of the Office of Workers’ Compensation Programs, which denied an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant’s claim.

**ISSUE**

The issue is whether appellant has more than a 10 percent permanent impairment of his right lower extremity.

**FACTUAL HISTORY**

On March 13, 2003 appellant, then a 48-year-old mail handler, sustained a right knee injury in the performance of duty: “Got off jitney to hook up [an all-purpose container] and felt pain in right knee.” The Office accepted his claim for right knee strain and dislocation. It later accepted a medial meniscal tear on the right and authorized a partial medial meniscectomy, which was performed on December 8, 2004 by Dr. Joseph E. Buran, an orthopedic surgeon.

On December 2, 2005 the Office issued a schedule award for a 10 percent permanent impairment of the lower extremity.<sup>1</sup> This was based on Dr. Buran's findings on range of motion.

On the prior appeal,<sup>2</sup> the Board found that appellant failed to establish that he had more than a 10 percent impairment of his right lower extremity. The Board noted that a diagnosis-based estimate for the partial medial meniscectomy could not be combined with impairment due to loss of motion.<sup>3</sup> The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

Appellant claimed an increased schedule award. He submitted the August 11, 2006 report of Dr. William S. Beckett, an internist, who noted a deformity of the right knee compared to the left. Dr. Beckett reported reduced flexion on the right to 90 degrees. Appellant was able to fully extend on standing but had pain extending his knee when sitting. Dr. Beckett reported:

“Using the American Medical Association [*Guides*] [*to*] *the* [E]valuation of [P]ermanent [I]mpairment, [appellant] has a permanent partial disability of the right knee, which includes two components. There is a moderate 20 percent permanent ... disability of the right lower extremity due to ankylosis in varus and a 15 percent permanent ... disability of the right lower extremity due to loss of flexion.

“Total of these is a 35 percent permanent ... disability of the right lower extremity.”

In a supplemental report dated January 8, 2007, Dr. Beckett stated: “With regards to his moderate 20 percent permanent ... disability of the right lower extremity due to ankylosis in varus, using the [fifth] [e]dition A.M.A., [*Guides*] (page 537), the actual measurement is [six] degrees varus.”

On July 7, 2007 an Office medical adviser reviewed Dr. Beckett's August 11, 2006 findings. The medical adviser explained that flexion to 90 degrees represented a 10 percent impairment. The medical adviser also noted that Dr. Beckett used a chart for ankylosis, which was inappropriate because appellant could flex and extend his knee, so it was not ankylosed.

In a decision dated July 17, 2007, the Office denied appellant's claim for an increased schedule award. Based on the review by the Office medical adviser, the Office found that Dr. Beckett's report did not demonstrate an increased impairment.

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<sup>1</sup> The Office misidentified the impairment as belonging to the left lower extremity.

<sup>2</sup> Docket No. 06-526 (issued May 1, 2006).

<sup>3</sup> As the diagnosis-based estimate was only two percent, the Office properly based its schedule award on the larger impairment from loss of motion.

## LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act<sup>4</sup> 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*.<sup>5</sup>

## ANALYSIS

Table 17-10, page 537 of the A.M.A., *Guides* shows that flexion to 90 degrees represents a 10 percent "mild" impairment of the lower extremity, not 15 percent as Dr. Beckett, the internist, reported. This finding alone does not establish that appellant has greater impairment than previously award.<sup>6</sup>

The Office medical adviser discounted Dr. Beckett's 20 percent estimate for varus deformity because he originally reported on August 11, 2006 that the knee was ankylosed in varus and there was simply no evidence of ankylosis.

In a January 8, 2007 supplemental report, Dr. Beckett clarified that he was using Table 17-10, page 537 of the A.M.A., *Guides*. He reported that the actual measurement was six degrees varus. According to Table 17-10, six degrees of varus represents a 20 percent "moderate" impairment of the lower extremity. The Board notes, however, that this has nothing to do with ankylosis or a frozen joint. The impairment is a due to a knee that bends inward at an abnormal angle, a "knock-knee." The Board also notes that Dr. Buran, the orthopedic surgeon, reported a varus deformity when he examined appellant on July 29, 2005, but he did not measure it.

The Board finds that Dr. Beckett's supplemental report establishes that appellant has a 20 percent permanent impairment of the right lower extremity due to varus deformity. The Board will set aside the Office's July 17, 2007 decision and will remand the case for payment of appropriate schedule compensation.

## CONCLUSION

The Board finds that appellant has more than a 10 percent permanent impairment of his right lower extremity. Appellant is entitled to an increased schedule award.

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>6</sup> Dr. Beckett reported no impairment due to loss of extension.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 17, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: January 14, 2008  
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