

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

RICHARD S. CATANZARO, Appellant

and

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

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**Docket No. 05-787
Issued: September 1, 2005**

Appearances:
Thomas S. Harkins, 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 February 17, 2005 appellant filed an appeal of a schedule award decision of the Office of Workers' Compensation Programs dated December 9, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has more than a 36 percent impairment of the right lower extremity, for which he received a schedule award. On appeal counsel contends that the Office made a calculation error and that appellant is entitled to a 39 percent right lower extremity impairment. Counsel also contends that appellant is entitled to schedule awards for both upper extremities.

FACTUAL HISTORY

On December 11, 1991 appellant, then a 45-year-old special delivery messenger, sustained multiple injuries when a cement step collapsed under him as he delivered mail. He stopped work that day and did not return, receiving appropriate compensation until he retired

effective October 31, 2002.¹ His accepted conditions were multiple site contusions, lumbar and cervical radiculitis, concussion with cerebral vestibulopathy and depressive disorder.

Appellant filed a schedule award claim on October 17, 2002. His attending physician, Dr. Igor Stiler, a Board-certified neurologist, provided a report dated December 12, 2002. He generally advised that appellant had a 15 percent right leg impairment, a 15 to 20 percent right hand/arm impairment, a 30 percent lumbar impairment and a 30 to 35 percent cervical impairment.

Appellant thereafter changed physicians. In reports dated April 28 and July 17, 2003, Dr. Perry Stein, Board-certified in physical medicine and rehabilitation, provided findings obtained in a March 21, 2003 functional capacity evaluation. Regarding the right lower extremity, Dr. Stein advised that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² appellant had Grade 4 knee weakness of flexion which equaled a 12 percent impairment and a Grade 3 weakness of extension which equaled a 17 percent impairment, to total a 29 percent right knee impairment. He further found Grade 4 impairments for weakness of right ankle inversion and eversion of 5 percent each, to total a 10 percent right ankle impairment. Dr. Stein also found ratable impairments for appellant's bilateral upper extremities.

The Office referred the medical record, including Dr. Stein's reports, to an Office medical adviser for an opinion regarding appellant's entitlement to a schedule award. In a report dated December 6, 2004, with a December 13, 2004 addendum, the Office medical adviser noted his review of Dr. Stein's impairment rating. He opined that maximum medical improvement had been reached on July 17, 2003 and, utilizing the A.M.A., *Guides*, agreed with Dr. Stein's analysis and impairment rating for appellant's right knee and ankle. The Office medical adviser utilized the Combined Values Chart of the A.M.A., *Guides* to find that appellant's 10 percent ankle impairment and 29 percent knee impairment combined to equal a 36 percent right lower extremity impairment.

By decision dated December 9, 2004, the Office granted appellant a schedule award for a 36 percent permanent impairment of the right lower extremity, for a total of 103.68 weeks, to run from July 17, 2003 to July 11, 2005.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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. The Act, however, does not specify the manner in which the percentage of loss shall

¹ Appellant elected retirement benefits under the Office of Personnel Management.

² The A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.404.

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.⁵

The Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for opinion concerning the nature and percentage of impairment.⁶

ANALYSIS

In this case, appellant's attending physiatrist, Dr. Stein, provided an impairment rating in reports dated April 28 and July 13, 2003. Dr. Stein referenced the fifth edition of the A.M.A., *Guides* and advised that appellant was entitled to a 10 percent right ankle impairment and a 29 percent right knee impairment. The Office properly referred Dr. Stein's reports to an Office medical adviser who, found that maximum medical improvement had been reached on July 17, 2003. He utilized Tables 17-7 and 17-8 of the A.M.A., *Guides*⁷ and agreed with Dr. Stein's findings and conclusions that appellant had a 10 percent right ankle impairment and a 29 percent right knee impairment. The Office medical adviser then utilized the Combined Values Chart, after reference to section 17.2a of the A.M.A., *Guides*, which notes when impairments for different regions of the same extremity should be combined.⁸ The Office medical adviser determined that a 29 percent right knee impairment, when combined with a 10 percent right knee impairment, equaled a 36 percent right lower extremity impairment.⁹

The only medical evidence of record that conforms with the A.M.A., *Guides* are the reports of Dr. Stein and the Office medical adviser. The Board finds that the Office medical adviser correctly utilized Dr. Stein's physical findings and determined that appellant was entitled to a 36 percent impairment of the right lower extremity. The medical evidence of record does not establish that appellant is entitled to a schedule award for his right lower extremity greater than the 36 percent granted.

The Board's jurisdiction is limited to consider and decide appeals from final decisions of the Office. The Office has not issued a final decision regarding appellant's entitlement to a schedule award for his bilateral upper extremities and this issue is not presently before the Board.¹⁰

⁵ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

⁷ The A.M.A., *Guides*, *supra* note 2 at 531-32.

⁸ *Id.* at 528.

⁹ *Id.* at 604.

¹⁰ *See Steven J. Gundersen*, 53 ECAB 252 (2001).

CONCLUSION

The Board finds that appellant has not established that he is entitled to greater than a 36 percent impairment of the right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 9, 2004 be affirmed.

Issued: September 1, 2005
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