

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MATTHEW HOLMES, JR. and DEPARTMENT OF THE NAVY,
MARINE CORPS RECRUIT DEPOT, Parris Island, S.C.

*Docket No. 96-2662; Submitted on the Record;
Issued September 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a five percent permanent impairment to the left leg.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained an aggravation of a degenerative tear of the left medial meniscus in the performance of duty on April 26, 1994. By decision dated March 29, 1996, the Office issued a schedule award for a five percent permanent impairment to the left leg. Appellant requested reconsideration, and by decision dated May 21, 1996, the Office denied the reconsideration request without review of the merits of the claim.

The Board has reviewed the record and finds that appellant has not established more than a five percent impairment to the left leg.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability 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.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

In this case, appellant's attending physician, Dr. Ralph F. Salzer, an orthopedic surgeon, stated in a treatment note dated November 22, 1995 that appellant had a considerable amount of meniscal tissue removed during his prior surgery,³ and appellant also had some articular cartilage

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

² A. George Lampo, 45 ECAB 441 (1994).

³ The record indicates that appellant underwent a menisectomy on August 2, 1994.

problems on the medial femoral condyle. Dr. Salzer opined that appellant had a five percent impairment of the leg. He also completed a form report (Form CA-1303) on March 4, 1996, recommending an impairment rating of five percent and a date of maximum medical improvement as May 19, 1995.

The record does not contain any other probative evidence as to the degree of permanent impairment in this case. It is appellant's burden to submit sufficient evidence to establish the essential elements of his claim with regard to a schedule award.⁴ Appellant has not submitted probative evidence establishing more than a five percent permanent impairment in this case.

With respect to the period of the schedule award, the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). This section provides a maximum of 288 weeks of compensation for loss of use of the leg; appellant therefore was properly paid compensation for 5 percent of 288 weeks, or 14.40 weeks. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.⁵ In this case, Dr. Salzer indicated that the date of maximum medical improvement was May 19, 1995, and the award therefore runs for 14.40 weeks commencing on May 19, 1995.

The decisions of the Office of Workers' Compensation Programs dated May 21 and March 29, 1996 are affirmed.

Dated, Washington, D.C.
September 8, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See A. George Lampo, *supra* note 2.

⁵ Albert Valverde, 36 ECAB 233, 237 (1984).