

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of RANDALL T. STILES and DEPARTMENT OF JUSTICE, IMMIGRATION  
& NATURALIZATION SERVICE, BORDER PATROL, Imperial Beach, CA

*Docket No. 98-52; Submitted on the Record;  
Issued October 27, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has greater than a 12 percent permanent loss of use of the right leg and a 15 percent permanent loss of use of his left leg.

The Office of Workers' Compensation Programs accepted that appellant's June 23, 1996 employment injury resulted in a torn anterior cruciate ligament of the left knee, a right knee sprain and a fracture of the right ankle. The Office also authorized surgery on the left knee and right ankle; a reconstruction of the anterior cruciate ligament of the left knee was performed on July 2, 1996 and a debridement, synovectomy and chondroplasty of the right ankle was performed on October 18, 1996, both by Dr. Thomas W. Harris.

On May 7, 1997 appellant filed a claim for a schedule award. In a February 14, 1997 report, Dr. Harris stated that appellant had reached maximum medical improvement when examined on February 14, 1997, and that appellant complained of patellar tendon aching at the beginning of the day and with prolonged activity or cold weather, and of slight to less than moderate ankle pain with working on uneven ground or stepping on rocks. He provided measurements of ankle and knee motion, and stated that appellant's objective factors of permanent impairment were the two surgeries, a 2.5 centimeter (cm) loss in muscle girth at 10 cm above the patella, a 1.5 cm loss of girth of the left calf, and slight instability of the reconstructed anterior cruciate ligament. Dr. Harris concluded that under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* appellant had a 7 percent permanent impairment for cruciate ligament laxity and an 11 percent permanent impairment for quadriceps atrophy for a combined total of 17 percent of the right leg, and a 7 percent permanent impairment of the left leg due to calf atrophy.

On July 30, 1997 an Office medical consultant in orthopedics reviewed Dr. Harris' February 14, 1997 report and stated:

“Subjective complaints regarding the right ankle include increased ankle pain with stepping on rocks, with the claimant feeling the ankle remains with a degree of instability in the sense that he loses his balance working on uneven ground. The physician further describes subjective complaints as occasional slight to greater than slight, increasing to less than moderate ankle pain with working on uneven ground or stepping on rocks. This reviewer would recommend grading these complaints a maximal [G]rade III as per the Grading Scheme found in chapter three, fourth edition of the A.M.A., *Guides*. This would be a 60 [percent] grade of a maximal 10 [percent] (common peroneal nerve -- 5 [percent] and sural nerve -- 5 [percent]) equivalent to a 6 [percent] impairment for the ankle discomfort. The records indicate 1.5 cm of calf atrophy involving the right lower extremity, which according to [T]able 37, chapter fourth edition of the A.M.A., *Guides* would be equivalent to a 6 [percent] lower extremity impairment. Ankle range of motion of 15 degrees dorsiflexion and 15 degrees of plantar flexion would be equivalent to a 0 [percent] impairment as per [T]able 42, chapter 3, fourth edition of the A.M.A., *Guides*. As per [T]able 43, the full inversion and full eversion would be rated 0. Utilizing the Combined Values Chart, the 6 [percent] for pain factors, combined with the 6 [percent] for atrophy, would be equivalent to a 12 [percent] impairment of the right lower extremity or leg.

“In regards to the left lower extremity or leg, ... [t]he physician indicates 2.5 cm of quadriceps muscle atrophy. 2.5 cm of quad atrophy would be equivalent to an 11 [percent] lower extremity impairment utilizing [T]able 37, chapter three, fourth edition of the A.M.A., *Guides*. Pain factors involving the left knee would be patellar tendon aching, consistent with less than occasional slight to greater than slight sharp pain, with subjective complaints of decreased strength in the left lower extremity and greater than slight to moderate discomfort with deep squatting -- left with a constant feeling of decreased sensation lateral to the knee incision that is slight to greater than slight. These subjective complaints would be graded a maximal grade III as per the Grading Scheme found in chapter three, fourth edition of the A.M.A., *Guides*, or a 60 [percent] grade of a maximal 7 [percent] (femoral nerve), equivalent to a 4.2 or rounded off to 4 [percent] impairment for pain factors. The records indicate a range of motion of the left knee of full extension and full flexion for a [zero] [percent] impairment. Utilizing the Combined Values Chart, the 4 [percent] for the left lower extremity pain due to the knee condition, combined with the 11 [percent] for thigh atrophy -- quadriceps weakness, combined with the 0 [percent] for loss of motion, would be equivalent to a 15 [percent] impairment of the left lower extremity or leg.

“A second method of calculating an award for the permanent functional loss of the left lower extremity or leg would be based on the mild anterior cruciate ligament residual laxity, which according to [T]able 64, page 85, would be equivalent to a 7 [percent] lower extremity impairment. When one selects values

from [T]able 64, no additional value for loss of function due to pain, loss due to limited motion, loss due to atrophy would be combined with a value from [T]able 64. The second method arrives at a lower award, and thus the first should be adopted, of a 15 [percent] impairment of the left lower extremity.”

On August 28, 1997 the Office issued appellant a schedule award for a 12 percent permanent loss of use of the right leg and a 15 percent permanent loss of use of his left leg.

The Board finds that appellant has no greater than a 12 percent permanent loss of use of the right leg and a 15 percent permanent loss of use of his left leg.

The schedule award provision of the Federal Employees’ Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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 Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>3</sup>

An Office medical consultant correctly applied the tables of the fourth edition of the A.M.A., *Guides* to each of the permanent impairments reported by Dr. Harris in his February 14, 1997. Ranges of motion of the left knee and right ankle were correctly assigned zero percent impairment. Pain was appropriately graded at Grade 3, described in Table 11 of chapter 3 as “Decreased sensibility with or without abnormal sensation or pain, which interferes with activity,” and the top of the range of 26 to 60 percent was used, then multiplied by the maximal values for the affected nerves. Percentages of impairment for atrophy of the left thigh and right calf were properly extrapolated from the ranges provided in Table 37 of chapter 3. The Office medical consultant also properly pointed out that use of a diagnosis-based estimate, as provided in section 3.2I, would result in a lesser impairment of 7 percent for mild cruciate laxity, as this section provides that either diagnostic or examination criteria, but not both, should be used. The permanent loss of use of appellant’s legs was correctly determined. The amount payable pursuant to a schedule award is based on the percentage of permanent impairment as determined using the A.M.A., *Guides*, and does not take into account the effect the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other activities.<sup>4</sup>

The decision of the Office of Workers’ Compensation Programs dated August 28, 1997 is affirmed.

---

<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> *Quincy E. Malone*, 31 ECAB 846 (1980).

<sup>4</sup> *Harry D. Butler*, 43 ECAB 859 (1992).

Dated, Washington, D.C.  
October 27, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member