

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT G. SHUMAN and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, Clovis, CA

*Docket No. 97-1890; Submitted on the Record;
Issued September 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has more than a 43 percent permanent loss of use of the left leg, for which he has received a schedule award.

In the present case, the Office of Workers' Compensation Programs had accepted that appellant fell on August 5, 1985 and sustained injuries to his low back and left knee. On July 31, 1988 the Office commenced payment of a schedule award for a 34 percent permanent impairment of the left leg. On September 21, 1995 appellant underwent a diagnostic arthroscopy, partial lateral menisectomy and removal of bone spurs of the left knee causally related to the accepted injury. Appellant, thereafter, requested payment of an additional schedule award. On February 10, 1997 the Office received a report from Dr. Les A. Konkin pertaining to an evaluation of appellant's left knee to determine the extent of his permanent impairment. By decision dated April 14, 1997, the Office granted appellant an additional schedule award of 9 percent, for a total schedule award of 43 percent loss of use of the left leg.¹

Section 8107 of the Federal Employees' Compensation Act² provides that, if there is a 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. For consistent results and to insure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants in the evaluation of permanent physical impairment. The American Medical Association, *Guides to*

¹ The record indicates that appellant had previously received an award for 34 percent loss of use of the left leg. An additional award of 9 percent, therefore, should have resulted in a total award of 43 percent.

² 5 U.S.C. § 8107.

the Evaluation of Permanent Impairment has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

In the present case, in his report dated February 10, 1997, Dr. Konkin opined that appellant had approximately a 60 percent permanent impairment of the left leg. He provided a detailed description of his examination findings, but did not indicate that he had used the A.M.A., *Guides* to determine the degree of appellant's impairment. The Board has long held that a medical opinion regarding permanent impairment which is not based upon the A.M.A., *Guides*, the standard adopted by the Office and approved by the Board as appropriate for evaluating schedule losses, was of little probative value in determining the extent of a claimant's permanent impairment.⁴ Because Dr. Konkin's opinion regarding the degree of permanent impairment was of little probative value, the Office properly requested that the Office medical adviser review Dr. Konkin's report and determine the extent of appellant's permanent impairment pursuant to the A.M.A., *Guides*.

In his report dated March 25, 1997, the Office medical adviser carefully applied Dr. Konkin's examination findings to the A.M.A., *Guides* and calculated that appellant had a 43 percent permanent impairment of the left leg. The Office medical adviser properly explained that either of two methods could be used to calculate appellant's impairment. The Office medical adviser stated that appellant's loss of motion of the knee, could be combined with his pain and atrophy findings, or a diagnosis-based estimate could be made utilizing appellant's surgical and arthritic findings. The Board finds that the Officer medical adviser's conclusions regarding the compatibility of the various tables in the A.M.A., *Guides*, was proper pursuant to FECA Bulletin No. 95-17.⁵

The Office medical adviser, thereafter, properly explained that appellant's patellectomy would be assigned a 22 percent impairment rating per Table 64 and his mild medial lateral joint narrowing from arthritic changes, which would take into account his partial and lateral menisectomies would result in a 20 percent impairment rating, which when combined using the Combined Values Chart, would result in a 38 percent impairment of the left lower extremity.

The Office medical adviser then calculated appellant's left leg impairment using Dr. Konkin's loss of motion, pain and atrophy measurements. He properly noted that appellant's pain complaints as documented by Dr. Konkin would result in a Grade IV, a high grade, impairment value. He properly noted that the maximum amount allowable for femoral nerve pain was 7 percent, pursuant to Table 68, which when multiplied by 80 percent, the maximum allowable for a Grade IV impairment, appellant's pain resulted in an impairment of 5.6 percent, which rounded up would be 6 percent. The Office medical adviser then utilized Table 41 for evaluating appellant's loss of motion of the knee. He properly noted that appellant's flexion,

³ *James J. Hjort*, 45 ECAB 595 (1994).

⁴ *James Kennedy, Jr.*, 40 ECAB 620 (1989).

⁵ FECA Bulletin 95-17 specifically provides that Table 62, Arthritis Based on Roentgenographically Determined Cartilage Intervals, and Table 64, Impairment Estimates for Certain Lower Extremity Impairments are not compatible with Tables 36-60, Table 68 and Tables 20-21.

which was limited to 58 degrees indicated a severe impairment for loss of motion, the maximum allowable for which would be a 35 percent impairment value. Finally, the Office medical adviser noted that Dr. Konkin's report documented thigh atrophy of 1.5 cm, which pursuant to Table 37 resulted in a 6 percent impairment. The Office medical adviser then properly combined the 35 percent impairment for loss of motion, with the 6 percent impairment for pain and the 6 percent impairment for thigh atrophy to find that appellant had a 43 percent impairment of the left leg. The Office adviser noted that as the diagnosis-based evaluation had only resulted in a 38 percent impairment, but the loss of motion evaluation had resulted in a 43 percent impairment rating, the higher rating should be chosen.

As the Office medical adviser thoroughly reviewed the evidence of record and properly applied the tables of the A.M.A., *Guides* to appellant's physical examination findings to concluded that appellant had a 43 percent permanent impairment of the left leg, the record does not substantiate that appellant has more than the 43 percent impairment for which the Office has granted appellant schedule awards.

The decision of the Office of Workers' Compensation Programs dated April 14, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 1, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member