U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN O'DOWD and DEPARTMENT OF THE ARMY,
Picatinny Arsenal, NJ

Docket No. 00-789; Submitted on the Record;
Issued April 11, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he has greater than a 15 percent permanent impairment of the left leg, for which he received a schedule award.

On June 3, 1987 appellant, then a 36-year-old store worker, fell backwards and sustained an injury to his left knee. The Office of Workers' Compensation Programs accepted appellant's claim for a sprain of the left leg.[1] On August 24, 1998 he underwent an arthroscopic left knee surgery. Appellant's claim was expanded to include a left torn medial meniscus. He subsequently endured three left knee arthroscopies resulting in partial medial meniscectomies. On December 12, 1994 appellant requested a schedule award for the left and right leg.[2]

In support of his claim, appellant submitted a July 21, 1994 report from Dr. Horia Schwartz, Board-certified in physical medicine and rehabilitation, who provided a diagnosis, which described permanent residuals of work-related trauma to both lower extremities and both knees. Dr. Schwartz noted persistent symptamatology and an indication of extensive degenerative arthritic changes such as chondromalacia patella as well as internal derangement. He concluded his examination by suggesting a permanent residual disability of 60 percent to the right leg and 50 percent to the left leg. Dr. Schwartz did not reference the American Medical Association, *Guides to the Evaluation of Permanent Impairment* in estimating impairment.

Appellant subsequently submitted a February 17, 1998 report from Dr. David J. Feldman, Board-certified in orthopedic surgery, who reviewed appellant's chronology of treatment from 1995 and then examined him for a percentage of impairment of the left lower extremity.

[1] By letter dated October 19, 1995, the Office noted that injuries related to the right knee regarding a May 16, 1995 fall would be consolidated under the (A2-665468) claim number. Appellant received a schedule award to the right knee of 25 percent to the right leg. The injuries related to the left knee would be considered under the (A2-573549) claim number. The Office has indicated that appellant's original claim form is missing.

[2] The present appeal only pertains to the left leg schedule award.

Dr. Feldman noted that appellant had a gait derangement of 3.2B based upon table 36 of the A.M.A., *Guides*. He observed that appellant had an antalgic gait associated with the use of a cane for walking. Dr. Feldman observed that a previous normal bone scan and x-ray evidence, showed that appellant did not have advanced arthritic changes of the hip, knee or ankle. He stated that appellant had a 10 percent whole person impairment. Dr. Feldman also stated that appellant had muscle atrophy based on Table 3.2C of the A.M.A., *Guides* and also complained of bilateral muscular atrophy. He stated that this was difficult to evaluate since he could not compare one thigh or calf circumference to the contralateral side. Dr. Feldman found that, on manual muscle testing, Table 3.2D, it was noted in the A.M.A., *Guides* that patients whose performance is inhibited by pain or fear of pain are not good candidates for manual muscle testing. He opined that this was consistent with previously noted examiners' findings as well. Dr. Feldman indicated that, according to Table 38 of the A.M.A., *Guides*, appellant did have at least a grade IV description of muscle function. He asserted that, "while he could not specifically compare thigh to thigh in impairment, he felt that the patient had a mild degree of impairment of the thighs bilaterally, which would equate to a two percent impairment of the whole person based upon Table 37 of the A.M.A., *Guides*. Dr. Feldman also utilized Table 41 of the A.M.A., *Guides* and noted that the patient had a full range of motion without evidence of restriction of motion. He utilized Table 62 of the A.M.A., *Guides*, evaluating the knees for arthritis impairment based upon radiographically determined cartilage intervals. Dr. Feldman stated that the last x-rays in the office were taken on June 29, 1995 and he felt there were no specific abnormal cartilage intervals at that time. However, he asserted that appellant had a history of direct trauma with complaints of pain and crepitus on physical examination but without joint space narrowing and indicated a two percent whole person impairment was warranted. Additionally, Dr. Feldman found that, upon additional evaluation of Table 64, with notes of impairment estimates for certain lower extremity impairments and the fact that appellant had partial medial meniscectomies of both knees, this would equate to a one percent per knee of whole person impairment. He concluded by stating that appellant had an 18 percent whole person impairment.

In a November 11, 1998 report, an Office medical adviser reviewed the report of Dr. Feldman and calculated the percentage of impairment of the left knee. The medical adviser initially noted that an award for gait disturbance could only be limited to one leg or the other, as it would be duplicative. Dr. Feldman stated that, since appellant received an award for gait disturbance to the right leg, the other notable factors would be used for the left leg. The medical adviser utilized the A.M.A., *Guides* and noted that appellant had full range of motion, and had negative impairment for motor/sensory examination. He found that appellant had a two percent whole person impairment for loss of muscle strength, which equated to an eight percent loss to the leg (Table 37, page 77). The medical adviser found that appellant had a five percent loss of crepitus (Table 62, page 83) and a two percent impairment to the leg for a partial medial meniscectomy (Table 64, page 85). The medical adviser concluded his November 9, 1998 report by stating that appellant had a 15 percent impairment of the left leg.

Accordingly, on December 24, 1998, the Office granted appellant a schedule award for a 15 percent permanent impairment of the left leg. The award covered a period of 43.20 weeks from February 17 to December 16, 1998.

On January 18, 1999 appellant, through his representative, made a request for a review of the written record. He did not supply additional information; however, he did refer the Office to the July 21, 1994 report of Dr. Schwartz, who gave an impairment of 50 percent to the left leg.

In a July 1, 1999 decision, the hearing representative affirmed the December 24, 1998 decision, finding that appellant had a 15 percent permanent impairment of the left leg.

The Board finds that appellant has no more than a 15 percent impairment of his left leg for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act[3] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* (4th ed. 1993) as an appropriate standard for evaluating schedule losses, and the Board has concurred in such adoption.[4]

In the instant case, the December 24, 1998 schedule award was based on the November 9, 1998 report of the Office medical adviser, who reviewed the February 17, 1998 findings of appellant's then treating physician, Dr. Feldman.

In his report, Dr. Feldman made findings for appellant to the whole person as opposed to a specifically enumerated part of the body. However, a whole body impairment is not compensable by a schedule award under the Act.[5] Additionally, he stated that appellant had a gait derangement of 10 percent whole person for the left lower extremity. However, the Office medical adviser noted that, according to the A.M.A, *Guides*, once a lower limb impairment was issued, it should stand alone and not be combined with those given to other parts in section 3.2.[6] Since appellant had previously received a rating of gait impairment of 10 percent to his right leg, a gait impairment to the left leg would be duplicative. Therefore, the Office medical adviser's reasoning that the gait derangement could not be considered twice was correct.

Dr. Feldman further evaluated appellant's muscle atrophy, noting that it was difficult to evaluate since he could not compare the thighs or calf circumferences. He asserted that, even though he could not specifically compare the thighs, he did feel that appellant had a mild degree of impairment of the thighs bilaterally, which would equate to a two percent impairment of the whole person based on Table 37, page 77. The Office medical adviser concurred with

[3] 5 U.S.C. § 8107.

[4] *James J. Hjort*, 45 ECAB 595 (1994).

[5] 5 U.S.C. §§ 8101(20); 8107(c)(22).

[6] The A.M.A., *Guides* (4th ed. 1993), in 3.2b Gait Derangement, states that the lower limb impairment percents shown in Table 36, page 76 should stand alone and should not be combined with those given in other parts of section 3.2.

Dr. Feldman and correctly utilized this figure to find that this was equivalent to an eight percent impairment to the leg.

In the category of pain and crepitation, based upon Table 62, page 83, Dr. Feldman noted that appellant did not have any abnormal cartilage intervals; however, since appellant had a history of direct trauma with complaints of pain and crepitus without joint space narrowing, a two percent whole person impairment was warranted. The Office medical adviser concurred with Dr. Feldman but correctly found the whole person rating equated to a five percent impairment to the leg.

Dr. Feldman gave appellant a one percent whole person impairment because appellant received a partial meniscectomy based upon Table 64, page 85. Since he gave a whole person impairment, the Office medical adviser determined that this equated to a two percent impairment to the leg.

Dr. Feldman concluded his evaluation by stating that appellant had an 18 percent whole person impairment, which included both lower extremities.

The Office medical adviser, using the equivalent left leg impairment for the whole person impairment noted by Dr. Feldman, with the exception of gait derangement, utilized the combined values chart and calculated a 15 percent impairment of the left upper extremity, with date of maximal medical improvement reached by February 17, 1998. The medical adviser correctly applied the A.M.A., *Guides* to determine that appellant had a 15 percent impairment of his left leg.

Additionally, appellant provided the July 21, 1994 report of Dr. Schwartz; however, this report was insufficient to justify greater impairment because he did not provide any explanation indicating that he relied upon the A.M.A., *Guides* in formulating his figures.[7] His figure appeared to be quite substantial; however, without an explanation as to how he calculated the rating, it was insufficient to comply with the Act.[8] There is no other medical evidence of record indicating that pursuant to the A.M.A., *Guides* appellant has a greater degree of impairment.

Appellant has not provided any probative medical evidence that he has greater than a 15 percent impairment of his left leg.

The decision of the Office of Workers' Compensation Programs dated July 1, 1999 is hereby affirmed.

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[7] Board precedent is well settled, however, that when an attending physician's report gives an estimate of permanent impairment and mentions the A.M.A., *Guides*, but does not base that estimate upon correct application of specifically identifiable sections, grading schemes, Tables or Figures, the Office is correct to follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides; see Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980). Board cases are clear that if the attending physician does not properly utilize the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of any permanent impairment; *see Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Raymond Montanez*, 31 ECAB 1475 (1980). *See Tonya D. Bell*, 43 ECAB 845 (1992).

[8] *Id.*

Dated, Washington, DC
April 11, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member