U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL C. WILSON, III and DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTE OF HEALTH, Bethesda, MD

Docket No. 02-1033; Submitted on the Record;
Issued October 18, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a 25 percent permanent impairment of the right upper extremity.

On April 6, 1998 appellant, then a 36-year-old carpenter, sustained an injury to his left knee when he was walking down steps. The Office of Workers' Compensation Programs accepted the claim for recurrent tears of the left anterior cruciate ligament (ACL) and meniscus and authorized surgery to repair the injury. Appellant sustained a consequential injury in 1998 when his knee buckled causing him to fall and fracture his right wrist. The Office accepted this claim and authorized surgery to repair the injury. Appellant stopped work on April 6, 1998 and thereafter returned to light duty until November 4, 1998, when he underwent a second knee surgery. He again returned to light-duty work.

In support of his claim, appellant submitted various records from Dr. James J. York, a Board-certified orthopedic surgeon, dated April 7, 1998 to February 16, 1999 and Dr. Terrence M. O'Donovan, a Board-certified orthopedic surgeon, dated January 15, 1999. Dr. York's reports noted a history of appellant's work-related injury on April 6, 1998. He diagnosed appellant with a recurrent tear of the ACL and meniscal articular cartilage injury. Dr. York, in an operative report dated May 18, 1998, noted that appellant underwent arthroscopic surgery with partial medial meniscectomy; debridement of the ischial tear; debridement and partial notchplasty; and debridement of the lateral femoral condyle chondromalacia. He indicated that appellant continued to experience progressively worsening pain, stiffness and diminished motion of the left knee since his surgery in May 1998. Appellant sustained another injury shortly thereafter when his left knee buckled causing him to fall on his right wrist ultimately causing a scaphoid fracture. Dr. York recommended a second surgery for the left knee, a partial medial meniscectomy, which was performed November 9, 1998. He diagnosed appellant with chronic ACL deficient knee with torn medial meniscus chondromalacia; and medial tibial plateau, Grade II. Dr. O'Donovan's report of January 15, 1999 indicated that appellant sustained a nonunion of his right scaphoid (wrist) in 1998 and was treated

conservatively for the fracture. He recommended surgery to repair appellant's wrist because he had gone over one year without evidence of healing.

On September 29, 1999 appellant filed a claim for a schedule award.

Thereafter, appellant submitted treatment notes from Dr. York who noted that appellant experienced an acute flare up of chondromalacia. Dr. York provided an impairment rating of 11 percent permanent impairment of the left lower extremity using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fourth ed. 1993) (A.M.A., *Guides*) which was comprised of 7 percent permanent disability for cruciate deficiency and 4 percent for medial and lateral meniscectomies.

Dr. York's report and the case record were referred to an Office medical adviser who, in a report dated December 13, 1999, agreed that appellant sustained 11 percent impairment of the left lower extremity.

The Office granted appellant a schedule award for 11 percent impairment of the left lower extremity.

Thereafter appellant submitted various medical records from Dr. O'Donovan dated November 1, 1999 to January 8, 2001. He noted treating appellant for his wrist injury which occurred in 1998 when appellant's left knee buckled causing him to fall on his right wrist. Dr. O'Donovan noted performing an open reduction; internal fixation; and bone grafting of the right scaphoid nonunion. He diagnosed appellant with right scaphoid nonunion. Dr. O'Donovan noted appellant was progressing well and returned him to light duty on December 21, 1999. His report of January 8, 2001 noted appellant reached maximum medical improvement with respect to the wrist injury. Dr. O'Donovan provided an impairment rating of 35 percent permanent impairment of the wrist, which comprised of: 30 degrees of flexion; 0 degrees of dorsiflexion; 0 radial deviation; and 0 ulnar deviation.

Dr. O'Donovan's report and the case record were referred to the Office's medical adviser who in a report dated March 7, 2001 determined that, in accordance with the A.M.A., *Guides*, appellant sustained 25 percent impairment of the right upper extremity.

In a decision dated March 15, 2001, the Office granted appellant a schedule award for a 25 percent impairment of the right upper extremity.

In a letter dated March 27, 2001, appellant requested an oral hearing before an Office hearing representative. The hearing was held on September 24, 2001. Appellant indicated that he was entitled to a schedule award for greater than 25 percent as his ability to use his right wrist was reduced by 50 percent. He noted that Dr. O'Donovan granted him a schedule award for 35 percent permanent impairment of the right upper extremity in an attached report dated January 8, 2001 and that another physician estimated 41 percent impairment; however, this physician's report was not in the case record.

In a decision dated December 17, 2001, the hearing representative affirmed the decision of the Office dated March 15, 2001.

The Board finds that appellant has no more than a 25 percent impairment of the right upper extremity.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] set 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. 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 implementing regulation as the appropriate standard for evaluating schedule losses.

On appeal appellant alleges that he is entitled to a schedule award greater than 25 percent permanent impairment of the upper right extremity.[3]

The Board has carefully reviewed Dr. O'Donovan's report dated January 8, 2001 which determined appellant's right upper extremity impairment and notes that he did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.[4] In a report dated January 8, 2001, Dr. O'Donovan provided the following range of motion figures: 30 degrees of flexion;[5] 0 degrees of dorsiflexion;[6] radial deviation of 0;[7] and ulnar deviation of 0.[8] However, Dr. O'Donovan did not provide a numerical impairment rating in conformance with the A.M.A., *Guides*. He noted appellant sustained a 35 percent permanent impairment of the wrist but failed to provide his calculations in support of this determination. Additionally, Dr. O'Donovan did not cite to tables or charts for an impairment

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] Appellants appeal indicates that he disagreed with the Office's determination with respect to the right upper extremity impairment rating. His appeal and the record do not indicate that he is appealing the schedule award granted for 11 percent permanent impairment of the left lower extremity; therefore, this matter is not before the Board at this time.

[4] *See Tonya R. Bell,* 43 ECAB 845, 849 (1992).

[5] *See* page 36, Figure 26 (4th ed. 1993) (A.M.A., *Guides*); *See also* page 467, Figure 16-28 (5th ed. 2001) (A.M.A., *Guides*).

[6] *See* page 36, Figure 26 (4th ed. 1993) (A.M.A., *Guides*); *See also* page 467, Figure 16-28 (5th ed. 2001) (A.M.A., *Guides*).

[7] *See* page 38, Figure 29 (4th ed. 1993) (A.M.A., *Guides*); *See also* page 469, Figure 16-31 (5th ed. 2001) (A.M.A., *Guides*).

[8] *See* page 38, Figure 29 (4th ed. 1993) (A.M.A., *Guides*); *See also* page 469, Figure 16-31 (5th ed. 2001) (A.M.A., *Guides*).

rating determination. The Board finds that he did not properly follow the procedures as set forth in the A.M.A., *Guides.*[9]

The medical adviser who reviewed Dr. O'Donovan's report correlated findings from Dr. O'Donovan's reports to specific provisions in the A.M.A., *Guides.* The medical adviser specifically noted the findings in Dr. O'Donovan's January 8, 2001 report of 30 degrees of flexion for an impairment rating of 5 percent;[10] 0 degrees of dorsiflexion for an impairment rating of 11 percent;[11] radial deviation of 0 for an impairment rating of 4 percent;[12] and ulnar deviation of 0 for an impairment rating of 5 percent.[13] The medical adviser found a 25 percent permanent impairment of the right upper extremity.

The Board notes that Dr. O'Donovan and the medical adviser calculated appellant's schedule award based on the fourth edition of the A.M.A., *Guides*. The fifth edition of the A.M.A., *Guides*[14] became effective February 1, 2001 and thereafter, the Office issued its March 15, 2001 decision. Upon review of both the fourth and fifth editions of the A.M.A., *Guides* the Board notes that there is no difference in the impairment rating in appellant's case.[15]

The Board finds that the medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. O'Donovan's January 8, 2001 report and reached an impairment rating of 25 percent. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more that a 25 percent permanent impairment of the right upper extremity.

The Board, therefore, finds that the weight of the evidence rests with the calculations of the Office medical adviser. Appellant is, therefore, entitled to a schedule award for no more than 25 percent impairment of the right upper extremity.

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[9] *See Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

[10] *See* page 36, Figure 26 (4th ed. 1993) (A.M.A., *Guides*); *See also* page 467, Figure 16-28 (5th ed. 2001) (A.M.A., *Guides*).

[11] *See* page 36, Figure 26 (4th ed. 1993) (A.M.A., *Guides*); *See also* page 467, Figure 16-28 (5th ed. 2001) (A.M.A., *Guides*).

[12] *See* page 38, Figure 29 (4th ed. 1993) (A.M.A., *Guides*); *See also* page 469, Figure 16-31 (5th ed. 2001) (A.M.A., *Guides*).

[13] *See* page 38, Figure 29 (4th ed. 1993) (A.M.A., *Guides*); *See also* page 469, Figure 16-31 (5th ed. 2001) (A.M.A., *Guides*).

[14] *See* FECA Bulletin 01-05 (issued January 31, 2001).

[15] *Supra* note 1-3; 7-14.

The decision of the Office of Workers' Compensation Programs dated December 17, 2001 is hereby affirmed.

Dated, Washington, DC
October 18, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member