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VICTOR M. VEGA, Appellant)	
)	
and)	Docket No. 04-2061
)	Issued: January 18, 2005
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. BORDER PATROL, El Centro, CA,)	
Employer)	
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Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

On August 18, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated May 28, 2004, finding that he had a two percent impairment to his right leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has more than a two percent permanent impairment to his right leg, for which he received a schedule award on May 28, 2004.

On March 12, 2002 appellant, then a 34-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury in the performance of duty on March 11, 2002. On October 7, 2002 the Office accepted his claim for a tear of the medial cartilage or meniscus and chondromalacia of the patella.

Appellant underwent arthroscopic right knee surgery on October 31, 2002. Dr. Thomas Harris, the attending orthopedic surgeon, reported postoperative diagnoses of lateral meniscus tear and chondromalacia of the medial femoral condyle. By report dated June 20, 2003, he provided results on examination, noting tenderness to palpation along the medial joint line, active range of motion to 135 degrees and patellar and medial joint line crepitus with range of motion. Dr. Harris indicated that appellant had reached a permanent and stationary level for the employment injury. He opined that appellant had a 10 percent leg impairment under the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), Table 17-33, secondary to lateral meniscus tear and "medial compartment chondral defect in the weight bearing portion found at the time of surgery."

The case was reviewed by an Office medical adviser who provided a medical history in a report dated February 9, 2004. The medical adviser opined that appellant had a two percent right leg impairment under Table 17-33 of the A.M.A., *Guides*, for a partial lateral meniscectomy.

By decision dated May 28, 2004, the Office granted a schedule award for a two percent permanent impairment to the right leg. The period of the award was 5.76 weeks of compensation commencing June 20, 2003.

LEGAL PRECEDENT

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 A.M.A., *Guides* as the uniform standard applicable to all claimants.²

ANALYSIS

Dr. Harris opined that appellant had a 10 percent impairment of his right leg based on Table 17-33 of the A.M.A., *Guides*.³ Table 17-33 provides diagnosis-based estimates of impairments resulting from knee conditions. He identified a lateral meniscus tear and under Table 17-33 a partial lateral meniscectomy is a two percent impairment. It is not clear how Dr. Harris determined that appellant had a 10 percent impairment. He reported that appellant had a medial compartment chondral defect, but Table 17-33 does not provide an impairment for such a condition. The table provides impairments for specific knee conditions and Dr. Harris did not identify any of the conditions enumerated under Table 17-33, other than the lateral meniscus tear.

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. § 10.404(a).

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

³ A.M.A., *Guides*, 546-47, Table 17-33.

The Office medical adviser opined that appellant had a two percent impairment, based on the partial lateral meniscectomy. There is no other probative medical evidence with respect to a permanent impairment to the right leg. The weight of the probative medical evidence establishes that appellant has a two percent impairment of the right leg.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use, of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant's impairment is 2 percent, he is entitled to 2 percent of 288 weeks or 5.76 weeks of compensation. 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.⁴ In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Harris on June 20, 2003. The award, therefore, properly runs for 5.76 weeks commencing on June 20, 2003.

CONCLUSION

The Board finds that the probative medical evidence of record establishes a two percent permanent impairment to the right leg for which the Office properly issued a schedule award on May 28, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 28, 2004 is affirmed.

Issued: January 18, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Albert Valverde*, 36 ECAB 233, 237 (1984).