United States Department of Labor
Employees' Compensation Appeals Board

JOHN L. CLEAVER, Appellant	)	
and	)	**Docket No. 05-740**
	)	**Issued: July 5, 2005**
DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On February 8, 2005 appellant filed a timely appeal of an October 26, 2004 merit decision of a hearing representative of the Office of Workers' Compensation Programs that found he had no greater than a 50 percent permanent impairment of the right leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has greater than a 50 percent permanent impairment of the right leg.

FACTUAL HISTORY

This case was previously before the Board on this same issue. In a decision and order dated August 6, 2001, the Board found that the Office properly referred appellant to Dr. Edward J. Resnick, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion on the extent of the permanent impairment of his right leg. The Board further found that

Dr. Resnick's report did not contain findings on physical examination that were described in sufficient detail to allow application of the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) to rate appellant's knee replacement results. In particular, the Board pointed out that Dr. Resnick did not provide measurements of the amount of mediolateral and anteroposterior stability, as specifically required by the applicable tables of the A.M.A., *Guides*.[1]

On remand, the Office, consistent with the Board's decision and order, referred appellant to Dr. Resnick for a supplemental report containing appropriate measurements of stability, flexion contracture, extension lag, and alignment; and providing a point total to rate appellant's knee replacement result. In a January 29, 2002 report, Dr. Resnick stated that his calculation of the point rating from the tables of the A.M.A., *Guides* was a total of 62 points, which constituted a 50 percent permanent impairment of the right leg.

By decision dated March 8, 2002, the Office found that appellant did not have greater than a 50 percent permanent impairment of the right leg. Appellant requested a hearing, which was held on April 8, 2003. By decision dated June 23, 2003, an Office hearing representative found that a new referee medical examination was needed, since Dr. Resnick still did not provide the data upon which he relied to reach his point rating.

On August 20, 2003 the Office referred appellant, the case record and a statement of accepted facts to Dr. Evan D. O'Brien, a Board-certified orthopedic surgeon, for an evaluation of the permanent impairment of his right leg. In a September 16, 2003 report, Dr. O'Brien stated that examination of appellant's right knee revealed normal alignment to inspection, extension to 0 degrees, flexion to 100 degrees, stability to valgus and varus stresses, a negative Lachman's sign, symmetric alignment, a negative apprehension sign, and less than four degrees of valgus. Dr. O'Brien then rated appellant's impairment using the tables of the fifth edition of the A.M.A., *Guides*:

> "Using Table 17-35 titled Rating Knee Replacement Results, the patient's pain would be rated as moderate occurring occasionally and would be assigned 20 points. The range of motion of the right knee is 100 degrees and would be assessed 20 points. The stability is normal and would be rated 25 points. There would be no deductions based on flexion contracture, extension lag or alignment. The total rating would therefore be 65 points based on Table 17-35 on page 549.
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> "Referring back to Table 17-33 on page 547, a total knee replacement rating of 65 points constitutes a fair result and the table indicates a lower extremity impairment rating of 50 percent."

By decision dated November 3, 2003, the Office found that appellant had no greater than a 50 percent permanent impairment of his right leg. Appellant requested a hearing, which was held on June 22 2004. By decision dated October 26, 2004, an Office hearing representative found that Dr. O'Brien's report constituted the weight of the medical evidence and established that appellant had no greater than a 50 percent permanent impairment of his right leg.

[1] Docket No. 00-2562 (issued August 6, 2001).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] sets 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.

ANALYSIS

On the prior appeal, the Board remanded the case to the Office because the report of Dr. Resnick, the impartial Board-certified orthopedic surgeon resolving a conflict of medical opinion on the extent of appellant's permanent impairment of his right leg, did not contain sufficiently detailed findings on examination to allow application of the tables of the A.M.A., *Guides* that rate results of total knee replacements. The Office obtained a supplemental report from Dr. Resnick, but this report also did not contain the specific measurements required by the A.M.A., *Guides*.

The Office therefore properly referred appellant, the case record and a statement of accepted facts to another impartial Board-certified orthopedic surgeon to resolve the conflict of medical opinion on the extent of appellant's impairment of the right leg.[4] Dr. O'Brien submitted a September 16, 2003 report that rated each of the impairments addressed in Table 17-35 of the fifth edition of the A.M.A., *Guides*, titled "Rating Knee Replacement Results." Dr. O'Brien correctly assigned 20 points for occasional moderate pain, 20 points for 100 degrees of flexion,[5] and 25 points for stability. Table 17-35 allots 15 points for up to 5 degrees of mediolateral movement, and Dr. O'Brien stated that the knee was "completely stable to varus and valgus stresses," which are medial and lateral movements.[6] With regard to anterioposterior movement, the component of stability for which Table 17-35 allots 10 points for less than 5 millimeters,

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] Where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report. However, when the impartial specialist is unable to clarify or elaborate on the original report or if the doctor's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record and a statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question. *Harold Travis*, 30 ECAB 1071, 1078 (1979).

[5] The table states that one point is added per five degrees of motion.

[6] Dorland's *Illustrated Medical Dictionary* (30th ed. 2003) defines varus as "bent or twisted inward; denoting a deformity in which the angulation of the part is toward the midline of the body" and valgus as "bent or twisted outward; denoting a deformity in which the angulation of the part is away from the midline of the body."

Dr. O'Brien stated that the Lachman's sign, a test of anterior and posterior movement,[7] was negative, and also stated that stability was normal.

With regard to the deductions of points provided for in Table 17-35, appellant's range of motion to 100 degrees indicates he does not have a flexion contracture, and his extension to 0 degrees shows he does not have an extension lag. With regard to alignment, Dr. O'Brien stated that appellant's alignment was symmetric and that he had less than four degrees of valgus. Table 17-35 provides for no deduction of points for zero to four degrees of malalignment.

Dr. O'Brien thus correctly totaled appellant's points at 65, and correctly applied Table 17-33 to convert the 65 points to a fair result of knee replacement,[8] which, according to this table, constitutes a 50 percent impairment of the lower extremity. Although Dr. O'Brien's report would have been easier for layman, such as the members of the Board, to interpret had it correlated specific measurements to each impairment for which points are assigned by Table 17-35, the Board finds that his report contained sufficient detail to allow visualization of the character and degree of the impairment and to properly apply the A.M.A., *Guides*.[9] The weight of the medical evidence, constituted by the September 16, 2003 report of Dr. O'Brien, an impartial specialist resolving a conflict of medical opinion,[10] establishes that appellant has no greater than a 50 percent permanent impairment of his right leg.

CONCLUSION

Appellant has no greater than a 50 percent permanent impairment of his right leg.

[7] Dorland's *Illustrated Medical Dictionary* (30th ed. 2003) defines Lachman's test as "an anterior drawer test for cases of severe knee injury, performed at 20 degrees of flexion."

[8] This table states that 50 to 84 points illustrate a fair result.

[9] *See Michael C. Norman*, 42 ECAB 768 (1991); *Gary L. Loser*, 38 ECAB 673 (1987); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6b(2) (August 2002).

[10] In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight. *James P. Roberts*, 31 ECAB 1010 (1980).

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member