

FACTUAL HISTORY

On October 1, 2002 appellant, then a 38-year-old assistant security officer, filed a claim alleging that on September 27, 2002 he fell off a ladder and injured both knees. The Office accepted internal derangement of the left lateral meniscus and a right knee contusion and authorized bilateral arthroscopic surgery. Appellant stopped work on October 2, 2002 and returned to light duty on December 27, 2002. Appropriate compensation benefits were paid.

Dr. Spencer M. Wheeler, a Board-certified orthopedic surgeon, noted treating appellant from October 1, 2002 to March 24, 2003 for bilateral knee pain. He diagnosed a degenerative medial meniscal tear of the left knee which developed after a fall at work in September 2002. A magnetic resonance imaging (MRI) scan was performed on the left knee on October 23, 2002 which revealed degenerative thinning of the medial and lateral meniscus, however, no tear of the menisci or cruciate ligament was seen. An MRI scan of the right knee performed the same day revealed degenerative changes of the medial and lateral meniscus, however, there was no tear of the meniscus or cruciate ligaments. On December 6, 2002 Dr. Wheeler performed arthroscopy of the left knee with a partial medial meniscectomy, chondroplasty of the medial patellafemoral compartments and diagnosed medial meniscal tear with some chondromalacia involving the medial patellafemoral compartments and loose bodies in the lateral compartment. In reports dated through February 10, 2003, he noted that appellant was progressing well postsurgery and had returned to work light duty on December 27, 2002. In a report dated March 24, 2003, Dr. Wheeler noted that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ he sustained a two percent impairment for the medial meniscus tear and five percent impairment for chondromalacia, for a total of seven percent impairment of the left lower extremity.²

On March 26, 2003 appellant filed a claim for a schedule award.

In a report dated April 14, 2003, an Office medical adviser determined that appellant sustained a two percent permanent impairment of the left lower extremity.³ He noted that Dr. Wheeler improperly granted him a five percent impairment rating for chondromalacia, noting that he had equated this condition with a tibial plateau fracture, however, this finding was not supported by the facts of the case and the rating was not in conformance with the A.M.A., *Guides*.

On April 25, 2003 Dr. Wheeler addressed surgery of appellant's knees and repeated his findings.

In a decision dated May 15, 2003, the Office granted appellant a schedule award for 2 percent impairment of the left leg and for 5.76 weeks of compensation for the period March 24, to May 3, 2003.

¹ A.M.A., *Guides* (5th ed. 2001).

² *Id.* at 546 (5th ed. 2001).

³ *Id.*

In a letter dated October 8, 2003, appellant requested reconsideration of the May 15, 2003 schedule award and submitted additional medical evidence. On June 23, 2003 Dr. Wheeler advised that he was progressing post surgery on the right knee. He noted some Grade 2 and 3 changes of the medial condyle and patellafemoral joint on the right. Dr. Wheeler opined that appellant sustained a 15 percent impairment of the right lower extremity and referenced page 546 of the A.M.A., *Guides*. On September 18, 2003 Dr. Wheeler addressed the impairment rating for the left knee and noted that he had a seven percent impairment rating and further indicated that it was common for chondroplasty to be performed secondary to chondral damage.

On October 20, 2003 the Office medical adviser determined that appellant reached maximum medical improvement on June 23, 2003. He noted that he had a partial medial and partial lateral meniscectomy of the left knee which would be a 10 percent impairment according to Table 17-33, page 546, of the A.M.A., *Guides*. With regard to the right knee, the medical adviser noted that Dr. Wheeler provided a five percent impairment rating for chondromalacia, however, he indicated that there was no provision in the A.M.A., *Guides* supporting this rating. He advised that the A.M.A., *Guides*, Table 17-2, page 544, provided impairment for arthritis and joint space narrowing but that Dr. Wheeler did not reference an x-ray which showed joint space narrowing as required under the A.M.A., *Guides*. The medical adviser further noted that appellant had a partial medial and lateral meniscectomy of the right knee which would provide a 10 percent rating according to Table 17-33, page 546, of the A.M.A., *Guides*.

In a decision dated October 23, 2003, the Office granted appellant a 10 percent impairment of the left lower extremity. The Office noted that he was previously paid for two percent impairment and was awarded an additional eight percent impairment of the left lower extremity. In a decision dated October 24, 2003, the Office granted appellant an additional eight percent impairment rating for the left leg. The period of the award was June 1 to November 9, 2003.

In a decision dated December 19, 2003, the Office granted appellant a schedule award for 10 percent impairment of the right knee. The schedule award was granted for the period November 10, 2003 to May 29, 2004.

By letter dated September 28, 2004, appellant requested reconsideration of the December 19, 2003 schedule award pertaining to his right knee. He submitted a report from Dr. Wheeler dated October 14, 2003, which noted that x-rays revealed narrowing of the medial compartment and flattening of the femoral condyle; however the actual x-ray report was not submitted. He diagnosed right knee pain with medial femoral condyle wear and tear. On September 21, 2004 Dr. Wheeler addressed the surgical findings and provided an impairment rating of 15 percent for the right lower extremity. He noted that chondroplasty was performed secondary to chondral damage and opined that appellant's diagnosed condition of chondromalacia was caused by the same trauma which caused the medial meniscal tear.

In a decision dated January 3, 2005, the Office denied modification of the December 19, 2003 schedule award.

By letter dated February 4, 2005, appellant requested reconsideration and resubmitted copies of Dr. Wheeler's reports dated June 23, 2003 to September 21, 2004.

By a decision dated February 18, 2005, the Office denied reconsideration on the grounds that his request neither raised substantive legal questions nor included new and relevant evidence and was, therefore, insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ 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 regulations as the appropriate standard for evaluating schedule losses.

ANALYSIS -- ISSUE 1

In support of his claim for a schedule award for the right lower extremity appellant submitted report's from Dr. Wheeler dated June 23, 2003 and September 21, 2004. The Board has carefully reviewed his reports and notes that Dr. Wheeler did not explain how his impairment rating was reached in accordance with the relevant standards of the A.M.A., *Guides*.⁶

On June 23, 2003 Dr. Wheeler noted some Grade 2 and 3 changes of the medial condyle and patellafemoral joint on the right and provided a 15 percent impairment rating. On the bottom of his report he noted "M+LM 10 percent Chond Plat Fx 5 percent" and referenced page 546 of the A.M.A., *Guides*. On September 21, 2004 he addressed the April 25, 2003 partial medial meniscectomy, chondroplasty of the medial and patellafemoral compartments and again provided an impairment rating of 15 percent for the right lower extremity. Dr. Wheeler supported his rating by noting that chondroplasty was performed secondary to chondral damage and opined that appellant's diagnosed condition of chondromalacia was caused by the same trauma which caused the medial meniscal tear. The Board notes that for a partial medial or lateral meniscectomy, Table 17-33, page 546 of the A.M.A., *Guides*, provides a 10 percent impairment rating. However, Dr. Wheeler did not adequately explain the basis for the additional five percent impairment rating described in his notes as "Chon Plat Fx = 5 percent." The A.M.A., *Guides* provide a five percent impairment rating for a plateau fracture undisplaced,⁷ however, the evidence of record does not support that appellant sustained a plateau fracture of the right knee. The Board notes that any additional impairment rating for arthritis of the patellafemoral joint under Table 17-31 at page 544 of the A.M.A., *Guides*, must be supported by

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

⁷ A.M.A., *Guides* at 546, Table 17-33.

an x-ray, which Dr. Wheeler did not obtain.⁸ The Board has held that an attending physician's report is of diminished probative value where the A.M.A., *Guides* are not properly followed.⁹

The Office medical adviser properly utilized the findings reported by Dr. Wheeler and correlated them to the specific provisions of the A.M.A., *Guides* (5th ed. 2001), to determine the impairment rating. He determined that appellant underwent a partial medial meniscectomy of the right knee which represents a 10 percent impairment according to Table 17-33, page 546 of the A.M.A., *Guides*. The Office medical adviser further noted that Dr. Wheeler's determination that appellant sustained a five percent impairment for chondromalacia was improper, as noted and indicated that there was no provision in the A.M.A., *Guides* supporting this rating. He advised that the A.M.A., *Guides*, Table 17-2, page 544, provided impairment for arthritis and joint space narrowing but Dr. Wheeler did not reference any x-ray which showed joint space narrowing as required by the A.M.A., *Guides*.¹⁰

The Office medical adviser properly applied the A.M.A., *Guides* to the medical evidence and found a 10 percent impairment of the right lower extremity. There is insufficient medical evidence to establish more than a 10 percent impairment of the right lower extremity.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,¹¹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2), of the implementing federal regulations,¹² which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

- “(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
- (ii) Advances a relevant legal argument not previously considered by the (Office); or
- (iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

⁸ See *Id.* at 544, Chapter 17.2h Arthritis, which requires that the arthritis impairment rating for the patellofemoral joint be supported by a “sunrise view” x-ray taken at 40 degrees flexion or on a true lateral view A.M.A., *Guides* (5th ed. 2001) see also *Thomas L. Iverson*, 50 ECAB 515 (1999).

⁹ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

¹⁰ Table 17-31 at page 544 of the A.M.A., *Guides*.

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹³

ANALYSIS -- ISSUE 2

Appellant's February 4, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of his request for reconsideration, appellant submitted medical reports from Dr. Wheeler dated June 23, 2003, October 14, 2003 and September 21, 2004. However, this evidence was duplicative of that already contained in the record.¹⁴ This evidence was previously considered by the Office in its decision dated January 3, 2005 and found deficient. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for further merit review as he did not submit relevant and pertinent evidence not previously considered by the Office."¹⁵

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his February 2005 request for reconsideration.

CONCLUSION

The Board finds that the Office properly determined that appellant had no more than a 10 percent impairment of the right lower extremity for which he received a schedule award, that the Office properly denied his request for reconsideration.

¹³ 20 C.F.R. § 10.608(b).

¹⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; see *Daniel Debarini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹⁵ 20 C.F.R. § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the February 18 and January 3, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 19, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board