

which revealed a partial tear of the anterior cruciate ligament (ACL). He was released to limited-duty work on February 22, 1999 and later to full-duty work on April 16, 1999. On March 6, 1999 the Office accepted appellant's claim for left knee sprain. The Office also accepted his claim for a partial tear of the ACL.

By letter dated October 29, 2003, appellant's attorney submitted an August 18, 2003 medical report from Dr. David Weiss, an osteopath, in support of his claim for a schedule award. Dr. Weiss provided a history of appellant's December 28, 1998 employment injury, medical treatment and family, social and employment background. He noted appellant's complaints of intermittent left knee pain, stiffness and instability. On physical examination, Dr. Weiss reported well-healed portal arthroscopy scars and mild infrapatellar effusion. He also reported flexion and extension range of motion of 0-140/140 degrees. Patellofemoral compression produced mild crepitation but no pain at 30 degrees. Patellar apprehension and inhibition signs were negative. There was tenderness along the medial joint line. Dr. Weiss found prominence of the tibial tubercle which was tender on palpation from a fracture of the tibial plateau as a child. Valgus and varus stress testing produced firm end points. The Lachman's and draw signs were both negative. Manual muscle strength testing of the quadriceps and gastrocnemius was graded as 5/5 each. Quadriceps circumferential measurements at 10 centimeters above the patella were 54.5 centimeters on the right versus 53 centimeters on the left. The gastrocnemius circumferential measurements were 40.5 centimeters on the left versus 41.5 centimeters on the right. Dr. Weiss reviewed appellant's medical records. He diagnosed post-traumatic internal derangement to the left knee with a partial thickness ACL tear, status post arthroscopic surgery to the left knee with debridement of the ACL tear and a history of fracture to the tibial tubercle of the left knee in 1979. Dr. Weiss opined that the December 28, 1998 employment injury caused appellant's subjective and objective findings. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*, 530, Table 17-6), he determined that appellant had an 8 percent impairment for left thigh atrophy and an 8 percent impairment for left calf atrophy, totaling a 15 percent impairment. Dr. Weiss further determined that he had a three percent impairment for pain in the left knee (A.M.A., *Guides*, 574, Figure 18-1). He combined the impairment rating for atrophy with the impairment rating for pain to determine that appellant had an 18 percent impairment of the left lower extremity. Dr. Weiss concluded that appellant reached maximum medical improvement on August 18, 2003.

On December 3, 2003 an Office medical adviser reviewed Dr. Weiss' August 18, 2003 report. He opined that appellant reached maximum medical improvement on August 18, 2003. The Office medical adviser determined that appellant had a six percent impairment resulting from 1.5 centimeters of left thigh atrophy and a 3 percent impairment resulting from 1 centimeter of left calf atrophy (A.M.A., *Guides* 530, Table 17-6). He added the impairments due to atrophy to find a total impairment of nine percent. The medical adviser then added a 3 percent impairment of the left knee due to pain (A.M.A., *Guides*, 574, Figure 18-1) to the 9 percent impairment due to atrophy and found a total left lower extremity impairment of 12 percent. He stated that Dr. Weiss did not prorate the atrophy according to Table 17-6 on page 530 of the A.M.A., *Guides*. The Office medical adviser stated that the table had a range and Dr. Weiss picked the upper limits of the range for his thigh and calf impairments.

By decision dated December 16, 2003, the Office granted appellant a schedule award for a 12 percent impairment of the left lower extremity based on the Office medical adviser's

December 3, 2003 opinion. In a December 19, 2003 letter, appellant, through counsel, requested an oral hearing before an Office hearing representative.

By decision dated December 17, 2004, an Office hearing representative affirmed the December 16, 2003 decision. He found that the Office medical adviser properly utilized the A.M.A., *Guides* in determining that appellant had a 12 percent impairment of the left lower extremity. On May 19, 2005 appellant, through counsel, appealed to the Board.

By order dated December 5, 2005,¹ the Board remanded the case to the Office for reconstruction and proper assemblage of the case record.

On April 6, 2006 the hearing representative reissued his decision finding that appellant had a 12 percent impairment of the left lower extremity based on the Office medical adviser's December 3, 2003 opinion.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁴ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

ANALYSIS

The Office accepted that appellant sustained a left knee sprain and a partial tear of the ACL of the left knee due to the December 28, 1998 employment injury. Appellant filed a claim for a schedule award on May 22, 2003 and submitted an impairment evaluation dated August 18, 2003 from Dr. Weiss in support of his request. Dr. Weiss found full range of motion from 0-140 degrees of the left knee. He reported patellofemoral compression which produced mild crepitance but no pain at 30 degrees. Dr. Weiss further reported tenderness along the medial joint line and tenderness on palpation of the tibial tubercle from a childhood fracture of the tibial plateau. He measured appellant's quadriceps circumference as 54.5 centimeters on the right and 53 centimeters on the left and his gastrocnemius circumference as 40.5 centimeters on the left and 41.5 centimeters on the right. Utilizing the A.M.A., *Guides* 530, Table 17-6, Dr. Weiss

¹ Docket No. 05-1285 (issued December 5, 2005).

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.404.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ 20 C.F.R. § 10.404.

determined that appellant had an eight percent impairment due to left thigh atrophy and an eight percent impairment due to left calf atrophy. He combined these ratings to determine that appellant had a 15 percent impairment. Dr. Weiss further determined that appellant had a three percent impairment due to pain in the left knee (A.M.A., *Guides* 574, Figure 18-1). He combined the impairment rating for atrophy of the thigh and calf with the impairment rating for pain, for a total left lower extremity impairment of 18 percent. Dr. Weiss opined that the date of maximum medical improvement was August 18, 2003.

An Office medical adviser applied the tables and pages of the A.M.A., *Guides* to Dr. Weiss' findings. The medical adviser found a six percent impairment due to 1.5 centimeters of left thigh atrophy and a 3 percent impairment due to 1 centimeter of left calf atrophy. According to Table 17-6 on page 530 of the A.M.A., *Guides*, a 1 to 1.9 centimeter difference in calf and thigh circumference represents a mild impairment within the range of a 3 to 8 percent impairment of the lower extremity. As appellant had 1.5 centimeters of atrophy of the thigh, the Office medical adviser properly assigned him an impairment rating that was in the middle of the range from 1 to 1.9 or 6 percent. Further, as he had one centimeter of atrophy of the calf, the Office medical adviser properly assigned him the low end of the impairment range or three percent.⁶ The Office medical adviser added the six percent and three percent impairments due to thigh and calf atrophy to find a nine percent impairment. He disagreed with Dr. Weiss' thigh and calf atrophy impairment ratings, stating that he did not prorate the atrophy according to Table 17-6 on page 530 of the A.M.A., *Guides*, rather, he picked the upper limits of the range. The Office medical adviser, however, concurred with Dr. Weiss' finding that appellant had a 3 percent impairment of the left knee due to pain (A.M.A., *Guides* 574, Figure 18-1), to find a total left lower extremity impairment of 12 percent. He indicated that the date of maximum medical improvement was August 18, 2003.

The Board notes that both Dr. Weiss and the Office medical adviser failed to explain the three percent impairment rating for pain under Chapter 18. Section 18.3b, page 571 of the A.M.A., *Guides*, specifically states that examiners should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ rating systems found in the other chapters.⁷ Moreover, neither physician addressed the cross-usage chart at Table 17-2, which notes that atrophy and pain impairments may not be combined.⁸

The Office medical adviser properly applied the A.M.A., *Guides* and provided rationale in rating a nine percent impairment of the left lower extremity under Chapter 17 for atrophy. The Board finds that the Office medical adviser's opinion represents the weight of the medical evidence of record and, excluding the three percent impairment for pain, establishes that appellant has no more than a nine percent impairment of the left lower extremity.

⁶ See, e.g., *Lorraine McGowan*, Docket No. 05-1308 (issued January 10, 2006).

⁷ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); *Philip A. Norulak*, 55 ECAB 690 (2004).

⁸ See A.M.A., *Guides* 526, Table 17-2; see also *Lorraine McGowan*, *supra* note 6.

On appeal, appellant's attorney argues that a conflict in medical opinion exists between Dr. Weiss and the Office medical adviser with regard to the extent and degree of impairment to the left lower extremity. As discussed above, however, the Office medical adviser properly determined that 1.5 centimeters of the thigh and 1.0 centimeter of the calf atrophy equaled a 6 percent and 3 percent impairment, respectively, rather than the 8 percent respective impairment found by Dr. Weiss.⁹

CONCLUSION

The Board finds that appellant has no more than a nine percent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2006 decision of the Office of Workers' Compensation Programs dated May 22, 2006 is affirmed, as modified.

Issued: March 26, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁹ A.M.A., *Guides* 530, Table 17-6.