

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE M. YANNY and DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION, Fresno, Calif.

*Docket No. 96-2081; Submitted on the Record;  
Issued September 16, 1998*

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DECISION and ORDER

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

The issue is whether appellant is entitled to a schedule award greater than the seven percent he received for permanent impairment of his right lower extremity.

The Board has carefully reviewed the case record and finds that appellant is entitled to no more than the seven percent schedule award issued for permanent impairment of his right knee.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.304 of the implementing federal regulations,<sup>2</sup> schedule awards are payable for the permanent impairment of specified bodily members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>3</sup>

However, neither the Act nor the regulations specify the method by which the percentage of impairment shall be determined.<sup>4</sup> The method used in making such determinations rests in the sound discretion of the Office of Workers' Compensation Programs.<sup>5</sup> For consistent results and to ensure equal justice for all claimants, the Office has adopted, and the Board has approved, the use of the appropriate edition of the American Medical Association, *Guides to the Evaluation of*

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.* (1974); 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> 5 U.S.C. § 8107(c)(19); *John M. Gonzales, Jr.*, 48 ECAB \_\_\_\_ (Docket No. 95-397, issued February 25, 1997).

<sup>4</sup> *A. George Lampo*, 45 ECAB 441, 443 (1994).

<sup>5</sup> *George E. Williams*, 44 ECAB 530, 532 (1993).

*Permanent Impairment* as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.<sup>6</sup>

In this case, appellant, then a 52-year-old civil engineer, filed a notice of traumatic injury on June 28, 1991, claiming that he lost his footing on a runway construction site and fell on his knees. Dr. Joseph C. Anderson, a Board-certified orthopedic surgeon, diagnosed a probable tear of the medial meniscus of the right knee, chondromalacia<sup>7</sup> of both knees and the medial femoral condyle.

Following appellant's knee surgery on October 19, 1991,<sup>8</sup> the Office accepted his claim for a meniscus tear of the right knee and paid appropriate compensation. Dr. Anderson noted that the "most significant findings" were the "extensive" chondromalacia of appellant's medial femoral condyle, patella, intercondylar femoral node and medial tibial plateau.

On May 12, 1994 the Office asked appellant's treating physician, Dr. Ezzat W. Wassef, a Board-certified orthopedic surgeon, to determine the extent of permanent partial impairment of appellant's right knee due to the meniscus tear. The Office informed appellant of the Act's provisions regarding a schedule award for loss of use of specific members of the body. On June 16, 1994 appellant, who relocated to Cairo, Egypt, filed a claim for a schedule award.

In a May 27, 1994 report, Dr. Wassef reviewed appellant's medical history, noting morbid obesity at 340 pounds and the 1991 arthroscopy of the right knee. He found diffuse slight swelling and tenderness, slight crepitus but no effusion or ligament instability or laxity. Dr. Wassef diagnosed advanced degenerative joint disease of both knees, indicating 100 degrees of flexion, full extension and 10 degrees of varus deformity, with no evidence of ankylosis or significant atrophy.

Dr. Wassef opined that appellant was limited to sedentary activity and was unable to return to his usual work duties. Dr. Wassef added that appellant was a poor candidate for rehabilitation due to the combined effects of advanced degenerative disease of both knees with difficulty ambulating, degenerative disc disease of the lumbosacral spine, and severe obesity, but did not provide an impairment rating for appellant's right knee.

After referral of the case to the Office medical adviser, the Office issued a schedule award on December 7, 1995 for a seven percent permanent impairment of appellant's right lower extremity, covering October 15, 1995 to March 4, 1996.

The Board finds that the Office medical adviser properly applied the appropriate tables found in the 4<sup>th</sup> edition of the A.M.A., *Guides*. The date of maximum medical improvement was

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<sup>6</sup> James J. Hjort, 45 ECAB 595, 599 (1994).

<sup>7</sup> Chondromalacia is defined as softening of the articular cartilage, most frequently in the patella. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

<sup>8</sup> An October 9, 1991 magnetic resonance imaging (MRI) scan of the right knee showed a "probable partial medial meniscal capsular separation." A May 20, 1992 MRI scan demonstrated degenerative or postoperative changes, without definite evidence of tear. The operation report stated that a partial meniscectomy was performed.

found to be October 19, 1992, one year after the arthroscopy. Referring to Table 64, page 85, the Office medical adviser found a 2 percent impairment based on appellant's medial meniscectomy, as noted by Dr. Anderson, who performed the surgery, and a 5 percent impairment for the chondromalacia of appellant's patello and femoral joints, as diagnosed by Dr. Anderson.

Appellant argues on appeal that he is 100 percent disabled because of his knees and notes that his physicians in Egypt, Dr. Nabil W. Bassillious and Dr. Ramses N. Boulis, both orthopedic specialists, found an 80 percent impairment of the lower extremity. However, this rating is based on appellant's "limp impairment from gait derangement," using Table 36, page 76 of the A.M.A., *Guides*, and their finding that a prosthesis is required for knee stability.

The accepted work injury was a partial meniscus tear of the right knee. The other diagnosed conditions from which appellant suffers -- severe degenerative joint disease of the knees and morbid obesity -- have not been established as work related. Therefore, a disability rating based on these impairments is not compensable under the Act.

In addition, the Act requires that the A.M.A., *Guides* be used in determining schedule awards. Drs. Bassillious and Boulis, as well as Dr. Wassef, neglected to apply the proper criteria to the accepted right knee injury. Thus, the Office properly referred the medical records to the Office medical adviser to calculate an award for appellant's right knee.

Appellant contends he has experienced considerable delay and frustration in receiving the compensation to which he was found to be entitled.<sup>9</sup> However, the record reflects that on June 21, 1996 a check for \$24,456.06 was issued to appellant at his correct Cairo address, consisting of \$12,665.91 in adjusted compensation from October 13, 1991 through August 19, 1995 due to the Office's correction of appellant's dependent's status and \$11,790.15 as payment of the schedule award from October 15, 1995 to March 4, 1996.

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<sup>9</sup> As the Office informed appellant on several occasions, the Office does not have the capability of electronically transferring compensation benefits to foreign banks. Thus, the monthly checks had to be mailed to appellant's address of record. Despite this information, appellant continued to ask the Office to deposit his checks directly into his account at a Cairo bank. After the schedule award was made in December 1995, the Office mistakenly began sending appellant's checks to a savings account in San Francisco, which appellant had closed on July 29, 1994 before moving to Egypt. Thus, appellant did not receive any compensation checks for more than six months. In addition, the Office failed to input appellant's correct foreign address into its computer system -- the country and zip code were omitted for more than a year. The result was that appellant's checks were continually delayed in reaching him abroad.

The December 7, 1995 decision of the Office of Workers' Compensation is affirmed.<sup>10</sup>

Dated, Washington, D.C.  
September 16, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> On appeal, appellant enclosed a July 13, 1996 report from Dr. Bassillious. The Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Therefore, the Board may not consider this evidence.