

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILIP H. McCOMAS and DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF PRISON, FEDERAL CORRECTIONAL INSTITUTION, El Reno, Okla.

*Docket No. 96-738; Submitted on the Record;
Issued January 7, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has more than a seven percent permanent impairment of the right lower extremity for which he received a schedule award.

The Board has duly reviewed the case record and concludes that appellant has no greater than a seven percent permanent impairment of the right lower extremity.

On July 17, 1994 appellant then a 50-year-old correctional treatment specialist, sustained an employment-related right meniscal tear requiring arthroscopy. By decision dated December 12, 1995, the Office of Workers' Compensation Programs granted him a schedule award for a seven percent permanent impairment for loss of use of the right lower extremity for the period September 28, 1994 to February 16, 1995 for a total of 20.16 weeks of compensation.

Under section 8107 of the Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. 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 under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ A.M.A., *Guides*, (4th ed. 1993).

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*,

The relevant medical evidence includes an August 17, 1994 report indicating that x-ray was within normal limits with no gross pathology noted. In a September 28, 1994 treatment note, Dr. Carlan K. Yates, appellant's treating Board-certified orthopedic surgeon, advised that, based on the A.M.A., *Guides*, appellant sustained a 10 percent permanent impairment of the right lower extremity, secondary to the loss of the posterior horn of the medial meniscus and the chondroplasty of the patella.

In a June 28, 1995 report, an Office medical adviser stated that maximum medical improvement had been achieved on September 28, 1994. He noted that he had reviewed the record and, based on the fourth edition of the A.M.A., *Guides*, appellant sustained a seven percent impairment of the right lower extremity. The Office medical adviser utilized Table 62 of the A.M.A., *Guides* in determining that appellant had a five percent impairment rating for chondroplasty of the patella without x-ray changes and Table 64 in determining that appellant had a two percent impairment rating for medial meniscectomy. The Office medical adviser then stated that using the combined values chart,⁵ appellant had a seven percent impairment of the right lower extremity. By report dated June 29, 1995, Dr. Yates advised that he had utilized the fourth edition of the A.M.A., *Guides*, stated that he had obtained x-rays, and reported his findings of posterior horn medial meniscal tear and "very slight" chondromalacia of the patella.

The Board finds that it was proper for the Office medical adviser to use Tables 62 and 64 from the fourth edition of the A.M.A., *Guides* to rate appellant's permanent impairment. While Dr. Yates advised that he also utilized the fourth edition of the A.M.A., *Guides* in determining that appellant's impairment rating was 10 percent, his opinion is of diminished probative value as he did not refer to specific tables or otherwise explain the basis of his rating. The Office medical adviser, however, utilized appropriate tables in the A.M.A., *Guides*.⁶ As it is appellant's burden to submit sufficient evidence to establish his claim,⁷ the Board finds that the Office permissibly followed the advice of its medical consultant in granting appellant a schedule award for a seven percent permanent impairment of the right lower extremity.⁸

Finally, the Board notes that on appeal appellant included information regarding night different and weekend pay. The record indicates that this pay differential information was taken into consideration by the Office in calculating his weekly pay rate to determine his schedule award.

38 ECAB 168 (1986).

⁵ A.M.A., *Guides*, *supra* note 3, page 322.

⁶ The Board notes, however, that under the combined values chart in the fourth edition of the A.M.A., *Guides*, a five percent impairment rating when combined with a two percent impairment rating would equal a six percent impairment of the right lower extremity, rather than the seven percent granted by the Office.

⁷ See *Annette M. Dent*, 44 ECAB 403 (1993).

⁸ See *Luis Chapa, Jr.*, 41 ECAB 159 (1989).

The decision of the Office of Workers' Compensation Programs dated December 12, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 7, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member