

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY E. MENOZZI and DEPARTMENT OF JUSTICE,
OFFICE OF THE INSPECTOR GENERAL, Chicago, Ill.

*Docket No. 96-2397; Submitted on the Record;
Issued July 6, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than the 13 percent schedule award he received for permanent impairment of his right leg.

On March 28, 1995 appellant, then a 37-year-old special agent, filed a notice of traumatic injury, claiming that he hurt his right knee while engaged in a tactical firearms shooting drill. The Office of Workers' Compensation Programs accepted the claim for a knee sprain and appellant underwent surgery after a magnetic resonance imaging (MRI) scan showed tears of the anterior cruciate ligament (ACL) and medial meniscus.

Appellant returned to limited-duty work on May 30, 1995 and had debridement surgery on August 2, 1995. Appellant returned to office duty only on September 29, 1995.

On January 16, 1996 the Office referred appellant to Dr. Hiroshi Eguro, a Board-certified orthopedic surgeon who had treated him, for an assessment of permanent partial impairment of his right knee. Dr. Eguro completed an impairment form on May 2, 1996, noting no pain or sensory loss, 115 degrees of flexion (150 normal), -3 degrees of extension (0 normal), intact meniscus, anterior sliding of the ACL by 3 mm., and a date of maximum medical improvement of May 2, 1996.

On May 25, 1996 the Office medical adviser calculated a 13 percent permanent impairment of appellant's right knee. The Office medical adviser noted a range of motion of 115 degrees for 0 percentage loss, quadriceps weakness of 4+/5 for 6 percent loss and mild cruciate laxity for 7 percent loss.

On July 2, 1996 the Office issued a schedule award of \$37,602.12 for a 13 percent loss of use of appellant's right leg. The award ran for 37.33 weeks from May 2, 1996 to January 19, 1997. Subsequently, appellant received the remainder of this schedule award in a lump sum.

The Board finds that appellant is entitled to no more than a 13 percent schedule award for loss of use of his right leg.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² 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.³

However, neither the Act nor the regulations specify the method by which the percentage of impairment shall be determined.⁴ The method used in making such determinations rests in the sound discretion of the Office.⁵ 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 Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.⁶

In this case, appellant argues that he is entitled to a 23.33 percent schedule award because Dr. Eguro found that he had lost 35 degrees of use of his right leg, that is, that he had only 115 degrees of use rather than the normal 150. Appellant contended that the 13 percent determination by the Office indicated that he had lost only 19.5 degrees of use, rather than the 35 degrees found by Dr. Eguro.

The Office medical adviser properly applied the 4th edition of the A.M.A., *Guides*, using the appropriate tables to calculate the percentage of permanent partial impairment. Thus, Table 41 on page 78 of the A.M.A., *Guides* shows that a flexion of less than 110 degrees would be a mild impairment of 4 to 10 percent. The Office medical adviser correctly found 0 percent because appellant's flexion was more than 110 degrees. Similarly, using Tables 39 and 64 on pages 77 and 85 of the A.M.A., *Guides* as well as the Combined Values Chart on page 322, the Office medical adviser determined that appellant had sustained a 13 percent loss of use of his right lower extremity.

Inasmuch as it is claimant's burden to provide medical evidence establishing his entitlement to a schedule award, and the medical evidence in this case supports no rating greater

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

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19); *William Edwin Muir*, 27 ECAB 579, 581 (1976); *see Terry E. Mills*, 47 ECAB ____ (Docket No. 94-837, issued January 30, 1996) (listing the members and organs of the body for which the loss or loss of use is compensable under the schedule award provisions).

⁴ *A. George Lampo*, 45 ECAB 441, 443 (1994).

⁵ *George E. Williams*, 44 ECAB 530, 532 (1993).

⁶ *James J. Hjort*, 45 ECAB 595, 599 (1994).

than the 13 percent schedule award already received by appellant, the Board finds that the Office properly determined that appellant was entitled to no more than a 13 percent impairment rating.⁷

The July 2, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.

July 6, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Lena P. Huntley*, 46 ECAB 643, 646 (1995) (finding that the Office medical adviser's proper application of the A.M.A., *Guides* constituted the weight of the medical evidence).