

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GARY D. WHITE and DEPARTMENT OF THE AIR FORCE,  
SCOTT AIR FORCE BASE, III.

*Docket No. 97-1938; Submitted on the Record;  
Issued July 9, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether appellant has greater than a two percent permanent loss of use of his left leg.

The Office of Workers' Compensation Programs accepted that appellant sustained a torn left medial meniscus in the performance of duty on May 28, 1991, and authorized surgery for this condition, which was performed on August 30, 1991 by Dr. Newton B. White, a Board-certified orthopedic surgeon. Following this surgery, appellant returned to light duty on October 15, 1991 and to his regular duties as a firefighter on December 2, 1991.

On October 13, 1992 appellant filed a claim for a schedule award. On March 18, 1994 the Office issued appellant a schedule award for a two percent permanent loss of use of his left leg. An Office hearing representative, by decision dated February 3, 1995 remanded the case for another medical evaluation of appellant's permanent impairment, as the prior evaluation did not take into consideration appellant's preexisting condition. The Office referred appellant, prior medical reports and a statement of accepted facts to Dr. William Costen, a Board-certified orthopedic surgeon. Based on Dr. Costen's March 9, 1995 report, the Office found by decision dated June 19, 1995 that appellant had a two percent permanent loss of use of the left leg. This decision was affirmed by an Office hearing representative in a decision dated March 11, 1997.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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 American Medical Association, *Guides to the*

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

*Evaluation of Permanent Impairment* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>3</sup>

The Board finds that appellant has no greater than a two percent permanent loss of use of his left leg.

The Office based its schedule award on the March 9, 1995 report of Dr. Costen, who noted that appellant had “aching in his left knee anteriorly and over the medial aspect” and “some clicking in the knee with motion.” Dr. Costen stated that physical examination of the left knee revealed ability to walk “a figure-of-eight with excellent control of both lower extremities and no limp,” no intra-articular effusion, a well-developed and strong quadriceps muscle, full extension, flexion to 130 degrees, stable medial and lateral collateral ligaments, stable posteromedial and posterolateral capsules, and a trace of crepitus. X-rays showed a patella normally centered in a well-developed femoral groove, no tilting of the patella, no narrowing of the patellofemoral joint, normal preservation of the medial and lateral joint spaces, no arthritic changes in the bone, and no other bony or soft tissue abnormalities. Dr. Costen concluded that appellant had recovered well from his surgery, that he would continue to have residual symptoms, and that “he will have permanent impairment of his left lower extremity as a result of his meniscal tear, early degenerative changes and the necessary surgery on the knee with partial removal of the medial meniscus.”

On May 25, 1995 Dr. Janet Elliot, a specialist in occupational medicine, reviewed the medical evidence as an Office medical consultant, and, applying the tables of the fourth edition of the A.M.A., *Guides*, assigned 0 percent for flexion to 130 degrees and extension to 0 degrees, 0 percent for no quadriceps atrophy, 0 percent for no loss of cartilage interval and 2 percent for partial meniscectomy. Dr. Elliot stated, “The lack of physical findings does not correlate to a higher award even considering the preexisting conditions.”

The Board finds that the report of Dr. Elliot assigning percentages to the findings of Dr. Costen is the only evaluation that conforms to the A.M.A., *Guides*, and that the weight of the medical evidence establishes that appellant had no greater than a two percent permanent loss of use of the left leg.

In support of his contention that he has greater than a two percent permanent loss of use of the left leg, appellant submitted reports from Dr. White. In a report dated September 4, 1992, Dr. White stated that appellant “has a 25 percent permanent disability to the left knee, secondary to his injury in the above-related internal derangement of the knee.” In a report dated December 22, 1994, Dr. White concluded, “I therefore feel that this patient who had a subtotal left medial meniscectomy which is an objective finding, shaving of the medial femoral condyle for a chondral injury which is an objective finding, resection of the medial shelf plica, that he has a 25 percent permanent disability of the left knee.” These reports cannot be used to rate appellant’s permanent impairment as they contain only one finding that correlates to the tables of the A.M.A., *Guides*: the partial meniscectomy which the A.M.A., *Guides* indicate constitutes a two percent impairment.

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<sup>3</sup> *Quincy E. Malone*, 31 ECAB 846 (1980).

In a report dated January 9, 1997, Dr. White stated that he had obtained the A.M.A., *Guides*, that it appeared there was little discrepancy with his conclusions except for more detail, and that the foreword to the A.M.A., *Guides* points out “Guides represent estimates rather than precise determinations.” Dr. White then stated:

“In reviewing [appellant’s] impairments, I feel he has (1) patellar subluxation which is due to a variant of long axis rotation of the patella in its relationship to the trochlear groove of the distal femur. This was developed in a merchant view which approximates about 40 degrees of flexion. This would account for 7 percent.

“We further note by objective standards the patient has a partial medial meniscectomy. I feel that two [percent] suggested in the guidelines is very inadequate since we had to resect a significant portion of the posterior horn of the medial meniscus, and I would ascribe this a six [percent] value. We further have a loss of hyaline cartilage or joint interval, which by my personal experience as being the treating surgeon, is a significant impairment to the medial femoral condyle, and I have a polaroid picture which refreshes my memory to the extent I feel he has a six [percent] impairment.

“In regard to loss of flexion extension, this patient sustained a 6 [percent] loss of flexion extension in that in the right lower extremity he can flex to 138 degrees, the left only 130.

“We further note in impairments on Table 41, they indicate that femoral tibial angle of 3 degrees to 10 degrees of valgus is considered normal, and I would submit that it is not considered normal by anybody for a male in an active occupation to have a three degree valgus. This patient has lost valgus angle and this is a serious part of his impairment, and I would ascribe to this a six [percent] loss of the joint. The patient tells me subjectively, he has pain after he attempts to run and limps after running, and I would ascribe this a five [percent] permanent disability.

“The sum total would be a 36 [percent] permanent disability, and this would be to the knee, and using the guidelines, I have multiplied a specific part impairment by .7 and this yields 25.2 [percent] permanent disability to the left lower extremity.

“These are my estimates of his impairment. I have done them in conjunction with a fairly careful study of the guides, and I find them only guides, and not explicit, chiseled-in-stone, or precise determinations.”

A review of Dr. White’s January 9, 1997 report shows that his estimates of appellant’s permanent impairment does not conform to the A.M.A., *Guides*. Table 64 of Chapter 3 allows 7 percent for patellar subluxation or dislocation with residual instability. Although Dr. White reported patellar subluxation, there is no evidence that this condition, if present, is accompanied by residual instability, as no medical report mentions such instability. The value assigned by Dr. White for partial meniscectomy, 6 percent, is nearly the value contained in Table 64 for a total meniscectomy, 7 percent, and is three times the value provided in the tables of the A.M.A., *Guides*. Dr. White does not provide a measurement for loss of joint interval, which is needed to

apply Table 62. Dr. White's assignment of 6 percent for loss of motion is inappropriate, as the contralateral joint is not compared<sup>4</sup> and Table 41 indicates an impairment is indicated only if flexion is less than 110 degrees. Dr. White reported flexion as 130 degrees. Dr. White's assignment of 6 percent for pain is also inappropriate, as Chapter 3 of the A.M.A., *Guides* states, "In general, the impairment percents shown in this chapter make allowance for the pain that may accompany the musculoskeletal system impairments." A permanent impairment for loss of valgus angle is not established, as Dr. White did not provide a measurement of appellant's actual valgus angle, and based his assignment of six percent for loss of valgus angle on a disagreement with the range of normal contained in the A.M.A., *Guides*. Since Dr. White's reports do not show greater than a two percent permanent loss of use by using the A.M.A., *Guides*, the Office properly issued appellant a schedule award for a two percent loss of use of his left leg.

The decision of the Office of Workers' Compensation Programs dated March 11, 1997 is affirmed.

Dated, Washington, D.C.  
July 9, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

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<sup>4</sup> *Frank Vara, Jr.*, 38 ECAB 434 (1987).