

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT E. TURNER and DEPARTMENT OF THE TREASURY,
U.S. SECRET SERVICE, Charlotte, NC

*Docket No. 98-2480; Submitted on the Record;
Issued April 3, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he has more than 10 percent permanent impairment of the right leg for which he has received a schedule award.

On March 24, 1995 appellant, then a 48-year-old special agent, filed a claim for traumatic injury alleging that on March 23, 1995 he injured his right knee while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for right knee strain.

On January 21, 1997 appellant filed a claim for a schedule award for his right knee.

By decision dated February 11, 1997, the Office granted appellant a schedule award for a five percent permanent impairment of his right leg.

On May 4, 1997 appellant filed a request for reconsideration. In support of his request, appellant submitted an April 22, 1997 medical report from Dr. Joseph J. Estwanik, Board-certified in orthopedic surgery. In his report, Dr. Estwanik referred to the "Carolinas Workmans Compensation Fee Schedule" to determine that appellant's postsurgical traumatic arthritis entitled him to a 10 percent permanent impairment of the joint. He also noted that appellant's loss of 5 degrees of motion resulted in a total 12 percent permanent disability. In an attached form dated the same day, Dr. Estwanik noted that appellant had 5 degrees loss of full knee extension and an additional impairment of function estimated at 12 percent. He recommended an impairment rating of 12 percent of the lower extremity. Dr. Estwanik noted that appellant had reached maximum medical improvement as of that date.

On May 29, 1997 the Office referred appellant's medical records to Dr. Harry L. Collins, Jr., an Office medical adviser and Board-certified in orthopedic surgery, for a medical evaluation to determine the percentage of right leg impairment.

In a medical report dated June 2, 1997, Dr. Collins stated that he had reviewed appellant's medical records including Dr. Estwanik's April 22, 1997 report. He noted that, in accordance with Table 41, page 78 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993),¹ 5 degrees loss of full extension resulted in a 10 percent permanent impairment of the right lower extremity. Dr. Collins noted that appellant's maximum medical improvement was April 22, 1997.

By decision dated June 16, 1997, the Office awarded appellant an additional 5 percent permanent impairment for a total of 10 percent permanent impairment of the right leg.

On April 14, 1998 appellant requested reconsideration. On May 5, 1998 the Office, in a nonmerit decision, denied appellant's application for review finding that the evidence submitted in support of the application was insufficient to warrant review of the prior decision.

The Board finds that appellant has no greater than a 10 percent permanent impairment of his right leg for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ 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 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

In this case, Dr. Estwanik calculated appellant's impairment on the right leg to be 12 percent but did not base his estimate on the A.M.A., *Guides* and thus his report is of diminished probative value. Dr. Collins, on the other hand, properly relied on Dr. Estwanik's findings noting that appellant's 5 degree loss flexion resulted in a 10 percent impairment of the lower extremity based on the A.M.A., *Guides*.⁵

Accordingly, the Board finds that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant had no more than a 10 percent impairment of the right leg, for which he had received a schedule award.

¹ A.M.A., *Guides*, 78, Table 41.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁵ See *James E. Jenkins*, 39 ECAB 860 (1988). Further, Chapters 1 and 2 of the A.M.A., *Guides* note that they were prepared to allow one physician to use the raw clinical data of another physician to arrive at a uniform standardized evaluation.

The decisions of the Office of Workers' Compensation Programs dated May 5, 1998 and June 16, 1997 are hereby affirmed.

Dated, Washington, D.C.
April 3, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member