

In a report dated November 18, 2004, Dr. Charles J. Niemeyer, appellant's Board-certified orthopedic surgeon, noted that a magnetic resonance imaging scan revealed medial

meniscus pathology posteriorly and recommended arthroscopic surgery. The Office accepted appellant's claim for left knee sprain and strain and a left knee meniscus tear.

On December 3, 2004 Dr. Niemeyer performed left knee arthroscopy with a partial medial meniscectomy and chondroplasty of the medial femoral condyle. On January 5, 2005 Dr. Niemeyer stated that appellant had no swelling in the knee, excellent range of motion and that appellant could return to regular duty without restriction. He recommended a five percent impairment rating because of the need for opening the joint. On February 9, 2005 Dr. Niemeyer postponed appellant's release to work and an impairment rating due to anterior pain. He recommended additional therapy including ultrasound treatments.

On March 16, 2005 Dr. Niemeyer stated that appellant had excellent range of motion, no effusion and good stability in the left knee and released him to return to regular duty that day. He recommended a five percent impairment rating "because of the conditions and the need for entering the knee arthroscopically." In a state compensation form report dated March 16, 2005, Dr. Niemeyer listed a five percent impairment rating of the left lower extremity.

On May 10, 2005 appellant filed a claim for a schedule award.

On June 17, 2005 the Office referred the claim to an Office medical adviser for calculation of the appropriate percentage of permanent impairment according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001). In a report that day, the Office medical adviser reviewed Dr. Niemeyer's reports and stated that appellant had reached maximum medical improvement as of January 5, 2005. The Office medical adviser recommended a two percent impairment of the left lower extremity for a partial medial meniscectomy according to the A.M.A., *Guides* Table 17-33, page 546.

On September 7, 2005 the Office awarded appellant a two percent schedule award for his left lower extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Willie C. Howard*, 55 ECAB ____ (Docket No. 04-342 & 04-464, issued May 27, 2004).

For lower extremity impairments due to meniscectomies or ligament injuries involving the knees, Table 17-1, page 525 of the A.M.A., *Guides*⁴ directs the clinician to utilize section 17.2j, beginning at page 545,⁵ as the appropriate method of impairment assessment. Section 17.2j, entitled Diagnosis-Based Estimates, instructs the clinician to assess the impairment using the criteria in Table 17-33 at page 546, entitled Impairment Estimates for Certain Lower Extremity Impairments.⁶ Under Table 17-33, a partial medial meniscectomy is equivalent to a two percent impairment of the lower extremity.⁷

ANALYSIS

The Office accepted that appellant sustained a sprain and strain injury and a meniscal tear to his left knee. Dr. Niemeyer performed left knee arthroscopic surgery for removal of a portion of the medial meniscus and a chondroplasty of the medial femoral condyle on December 3, 2004. He stated that appellant had sustained a five percent impairment due to the surgical procedure. Dr. Niemeyer noted that appellant improved after physical therapy treatments and had an excellent range of motion, no effusion and good stability. He released appellant to return to his regular job and reiterated a five percent impairment rating for the left lower extremity. However, Dr. Niemeyer did not use the A.M.A., *Guides* to determine appellant's impairment. Consequently, his opinion is of diminished probative value. The Office medical adviser reviewed Dr. Niemeyer's findings and applied the relevant tables in the A.M.A., *Guides* to arrive at an impairment rating for appellant's left leg.⁸

The Office medical adviser properly determined that appellant had a two percent impairment of the left leg due to his partial meniscectomy. The A.M.A., *Guides* provide that a partial medial meniscectomy is a two percent impairment of the affected leg. While Dr. Niemeyer recommended a five percent impairment rating because he had to enter the knee arthroscopically, he did not cite any provision in the A.M.A., *Guides* to support this estimate. The Office medical adviser properly applied the A.M.A., *Guides* in determining appellant's impairment rating of two percent. There is no other medical evidence of record, conforming with the A.M.A., *Guides*, that supports a greater impairment. The Board finds that appellant has no more than a two percent impairment of the left leg, for which he received a schedule award.

⁴ A.M.A., *Guides* (5th ed. 2001) 525, Table 17-1.

⁵ *Id.* at 545.

⁶ *Id.* at 546, Table 17-33.

⁷ *Id.*

⁸ Office procedures contemplate that an Office medical adviser will evaluate cases where the case appears to be in posture for schedule award determination. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3 (October 1990).

CONCLUSION

The Board finds that appellant has failed to establish that he is entitled to more than a two percent schedule award for the left lower extremity.⁹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 7, 2005 is affirmed.

Issued: February 3, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁹ The Board notes that this case record contains evidence which was submitted subsequent to the Office's September 7, 2005 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).