

On February 7, 2005 Dr. Keene performed a partial medial meniscectomy on appellant's right knee. The procedure was authorized by the Office. On April 12, 2005 Dr. Keene stated that examination of appellant's right knee showed that his surgical incisions were well healed and his skin demonstrated no erythema or effusion. Appellant's right knee showed no effusion or swelling, no joint line tenderness was present and his distal neurovascular examination was normal. Dr. Keene stated: "The patient was given five percent permanent disability for his right knee medial meniscectomy."

On June 13, 2005 appellant filed a claim for a schedule award due to his accepted employment injury. On February 24, 2006 Dr. Keene indicated that appellant had permanent impairment of his right leg due to his partial medial meniscectomy, but he did not provide an impairment rating. He determined that appellant reached maximum medical improvement on June 1, 2005.¹

On June 12, 2006 Dr. David H. Garelick, a Board-certified orthopedic surgeon who served as an Office medical adviser, reviewed the medical evidence of record. He indicated that appellant did not exhibit any sensory or range of motion deficits in his right knee. Dr. Garelick determined that under Table 17-33 on page 546 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) appellant had a two percent permanent impairment of his right leg due to his partial medial meniscectomy.

The Office accepted that on March 28, 2007 appellant sustained another partial tear of his right medial meniscus due to stepping off a porch step while delivering mail.² The Office combined the files for appellant's May 26, 2004 and March 28, 2007 injuries.

On May 2, 2007 Dr. Keene performed a partial medial meniscectomy on appellant's right knee.³ The procedure was authorized by the Office. On June 6, 2007 appellant filed a claim for a schedule award. On June 14, 2007 Dr. Keene indicated that appellant did not have any permanent impairment of his right knee due to sensory loss, limitation of motion, ankylosis, muscle weakness or atrophy.⁴ He concluded that appellant had a five percent permanent disability due to his partial medial meniscectomy. Dr. Keene determined that appellant reached maximum medical improvement on June 14, 2007.

¹ Dr. Keene indicated that appellant had 150 degrees of flexion and 0 degrees of flexion in his right knee.

² On April 13, 2007 Dr. Kirkland Davis, an attending Board-certified orthopedic surgeon, stated that magnetic resonance imaging scan testing obtained the day before showed a partial tear of appellant's right medial meniscus with an intact lateral meniscus.

³ Dr. Keene also debrided appellant's right medial and lateral femoral condyles. He noted that appellant's right lateral meniscus was normal.

⁴ Dr. Keene indicated that appellant complained of occasional right knee pain, inability to kneel and some difficulty with steps. He noted that appellant had 130 degrees of flexion and 0 degrees of extension. In another June 14, 2007 report, Dr. Keene indicated that examination of appellant's right knee revealed a well-healed scar with no effusion or joint line tenderness. Appellant had 125 degrees of flexion and 0 degrees of extension and was intact from and neurologic and vascular standpoint. Dr. Keene stated that appellant had a five percent permanent disability.

On July 2, 2007 Dr. Garelick reviewed the medical evidence of record and discussed the findings of Dr. Keene. He determined that under Table 17-33 on page 546 of the A.M.A., *Guides* appellant had a two percent permanent impairment of his right leg due to his partial medial meniscectomy.

On August 8, 2007 the Office granted appellant a schedule award for a two percent permanent impairment of his right leg. The award ran for 5.76 weeks from June 14 to July 24, 2007.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulations⁶ set 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.⁷

ANALYSIS

The Office accepted that on May 26, 2004 appellant sustained a partial tear of his right medial meniscus due to stepping off an 18- to 24-inch curb while delivering mail. On February 7, 2005 Dr. Keene, an attending Board-certified orthopedic surgeon, performed a partial medial meniscectomy on appellant's right knee. The Office accepted that on March 28, 2007 appellant sustained another partial tear of his right medial meniscus due to stepping off a porch step while delivering mail. On May 2, 2007 Dr. Keene performed a partial medial meniscectomy on appellant's right knee. In an August 8, 2007 award of compensation, the Office granted appellant a schedule award for a two percent permanent impairment of his right leg.

The Board finds that the Office properly relied on the opinion of Dr. Garelick, a Board-certified orthopedic surgeon who served as an Office medical adviser, in determining that appellant had a two percent permanent impairment of his right leg. On July 2, 2007 Dr. Garelick properly determined that under Table 17-33 on page 546 of the A.M.A., *Guides* appellant had a two percent permanent impairment of his right leg due to his May 2, 2007 partial medial meniscectomy.⁸ There is no indication in the record that appellant's right knee condition would

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

⁸ See A.M.A., *Guides* 546, Tables 17-33. The fact that appellant also underwent a right partial medial meniscectomy on February 7, 2005 would not entitle him to a higher impairment rating under the relevant standards of the A.M.A., *Guides*. See *id.*

warrant additional impairment ratings for muscles weakness, limited motion or sensory loss related to peripheral nerves.⁹

On June 14, 2007 Dr. Keene indicated that appellant had a five percent permanent disability due to his partial medial meniscectomy. However, a five percent impairment rating for appellant's right leg is not supported by Table 17-33 or any other portion of the A.M.A., *Guides*. The opinion of Dr. Keene is of diminished probative value in that he failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.¹⁰

As the report of Dr. Garelick provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.¹¹ Therefore, the Office properly granted appellant a schedule award for a two percent permanent impairment of his right leg.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a two percent permanent impairment of his right leg, for which he received a schedule award.

⁹ See A.M.A., *Guides* at 532, 537, 552, Tables 17-8, 17-10 and 17-32. Although appellant complained of some right knee pain and other deficits, Dr. Keene reported normal examination findings with respect to sensation, strength and motion. Even if strength and motion impairments were found under the relevant standards they could not be combined with a diagnosis-based impairment such as that derived from the performance of a partial medial meniscectomy. *See id.* at 526, Table 17-2.

¹⁰ See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

¹¹ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 8, 2007 decision is affirmed.

Issued: February 6, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board