# **United States Department of Labor Employees' Compensation Appeals Board**

J.P., Appellant	)	
and	)	Docket No. 09-2044
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Vincennes, IN, Employer	) ) )	Issued: March 24, 2010
Appearances: Appellant, pro se Office of Solicitor, for the Director	,	Case Submitted on the Record

### **DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge COLLEEN DUFFY KIKO, Judge JAMES A. HAYNES, Alternate Judge

#### **JURISDICTION**

On August 11, 2009 appellant filed a timely appeal from the April 7, 2009 merit decision of the Office of Workers' Compensation Programs, which found a two percent impairment of his right lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

### **ISSUE**

The issue is whether appellant has more than a two percent impairment of his right lower extremity.

### **FACTUAL HISTORY**

On September 27, 2007 appellant, then a 56-year-old inspector, sustained an injury in the performance of duty when he stepped in a hole in the Gibson Mine and twisted his right knee. The Office accepted his claim for right knee sprain and right medial meniscus tear. On

December 20, 2007 appellant underwent a right knee arthroscopy with partial medial meniscectomy, debridement of the lateral tibial plateau and debridement of the patella.

Appellant filed a claim for a schedule award. On April 14, 2008 Dr. Terry D. Fenwick, his orthopedic surgeon, performed an evaluation. Appellant stated his knee was doing well and denied any pain. He had discontinued his home exercise program and was not taking medication for his right knee. Dr. Fenwick reported no positive findings on physical examination. In addition to a right medial meniscus tear, he diagnosed lateral chondromalacia and chondromalacia patella. Dr. Fenwick stated: "I believe that the patient is currently at MMI [maximum medical improvement] and has a four percent impairment rating. Impairment rating based on A[merican] M[edical] A[ssociation], *Guides [to the] Evaluation of Permanent Impairment*, fifth edition. This applies to the right lower extremity."

An Office medical adviser reviewed Dr. Fenwick's rating and noted that the only basis for impairment was appellant's right partial medial meniscectomy. He concluded that appellant had a two percent impairment of the right lower extremity.

On April 7, 2009 the Office issued a schedule award for a two percent impairment of appellant's right lower extremity, or 5.76 weeks of compensation. Appellant seeks the Board's review. He expresses no particular disagreement with the Office's decision.

# **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>2</sup>

#### **ANALYSIS**

The Office accepted appellant's claim for a right medial meniscus tear and on December 20, 2007 he underwent a partial medial meniscectomy. Table 17-33, page 546 of the A.M.A., *Guides* states that a partial medial meniscectomy represents a two percent impairment of the lower extremity. Therefore, a two percent impairment of the right lower extremity is established.

Dr. Fenwick, appellant's orthopedic surgeon, offered no other basis for an impairment rating. Appellant was doing well, had no complaints, had discontinued his exercises and was taking no medication. Dr. Fenwick reported no positive findings on physical examination. He did state that he believed appellant had a four percent impairment of the right lower extremity, but he did not explain. Dr. Fenwick referred to the A.M.A., *Guides*, but did not show how he applied the guidelines to arrive at that percentage. He cited no tables, figures or page numbers.

<sup>&</sup>lt;sup>1</sup> 5 U.S.C. § 8107.

<sup>&</sup>lt;sup>2</sup> 20 C.F.R. § 10.404.

Because Dr. Fenwick offered no rationale for his April 14, 2008 impairment rating, the Board finds that his opinion has little probative value.

The Board finds that appellant has no more than a two percent impairment of his right lower extremity. A 100 percent impairment of the lower extremity, as with amputation at the hip, would entitle a claimant to 288 weeks of compensation.<sup>3</sup> Partial impairments are compensated proportionately.<sup>4</sup> Therefore, a two percent impairment entitles appellant to 5.76 weeks of compensation (288 x 0.02 = 5.76), which is what the Office awarded. The Board will therefore affirm the Office's April 7, 2009 decision.

# **CONCLUSION**

The Board finds that appellant has no more than a two percent impairment of his right lower extremity.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 7, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2010 Washington, DC

Alec J. Koromilas, Chief Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

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

<sup>&</sup>lt;sup>3</sup> 5 U.S.C. § 8107(c)(2).

<sup>&</sup>lt;sup>4</sup> *Id.* at § 8107(c)(19).