

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIM R. GRIFFIN and DEPARTMENT OF THE NAVY,
PACIFIC MISSILE TEST CENTER, Point Mugu, Calif.

*Docket No. 95-2623; Submitted on the Record;
Issued April 2, 1998*

DECISION and ORDER

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

The issue is whether appellant has more than an 11 percent permanent impairment of his left lower extremity for which he received a schedule award.

On June 29, 1989 appellant, then a 39-year-old marine machinery mechanic, filed a claim for traumatic injury, Form CA-1, claiming that on June 28, 1989 he sustained injuries to his hip, neck and back while in the performance of duty. Appellant subsequently fell sustaining additional injuries he claimed were a direct consequence of his original employment injury. The Office of Workers' Compensation Programs accepted appellant's claim for thoracic, cervical and lumbar strains, herniated disc at L5-S1, right elbow and shoulder strains, and left knee internal derangement. In a decision dated May 19, 1993, the Office granted appellant a schedule award for a six percent permanent impairment of his right upper extremity. Appellant received all appropriate compensation benefits until he returned to permanent light duty on July 22, 1993.¹

Subsequently, appellant filed a claim for a schedule award for his left knee.

By letter dated June 6, 1994, the Office requested that Dr. Kenneth K. Koch, a Board-certified orthopedic surgeon and appellant's attending physician, examined appellant in order to determine the extent of permanent partial impairment of his left knee, utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The Office provided Dr. Koch with the appropriate forms for evaluating appellant's condition.

Dr. Koch submitted a narrative report dated October 19, 1994, and an attending physician's report (Form CA-20) dated October 18, 1994, in which he stated that appellant's

¹ In a decision dated November 14, 1994, the Office found that the position of Environmental Protection Specialist at the Naval Air Warfare Center-Weapons Division fairly and reasonably represented appellant's wage-earning capacity. In addition, as the pay rate of appellant's new position was greater than his date of injury salary, the Office terminated appellant's compensation. Appellant has not indicated a desire to appeal this decision.

condition was permanent and stationary and that he had a total disability rating for semi-sedentary work, with 60 percent of this being due to his back injury, 20 percent due to the left knee injury, 10 percent due to the neck and right shoulder injury, and 10 percent due to the right elbow injury.

By letter dated November 11, 1994, the Office acknowledged the receipt of Dr. Koch's narrative reports and requested that he complete and submit the appropriate schedule award evaluation forms.

Dr. Koch subsequently submitted a narrative report dated November 22, 1994, in which he stated that appellant had returned that day complaining of gradually increasing pain along the medial side of the left knee for the past four to five months. Dr. Koch noted there was no specific crepitation of significance and no significant effusion, but that appellant had difficulty with weight bearing and colder weather. Dr. Koch added that on examination there was a trace of effusion, ligaments were stable, the McMurray test caused no significant discomfort but there was pain along the medial joint line. He stated that repeat films were obtained showing no medial or lateral joint space narrowing. Dr. Koch prescribed medication and elastic support and added that if these symptoms continued for another two weeks he would recommend a repeat magnetic resonance imaging scan.

On December 9, 1994 Dr. Koch submitted the completed schedule award evaluation forms. Dr. Koch indicated that appellant reached maximum medical improvement on October 19, 1994, continued to have mild to moderate pain on occasion, used a brace for support, and had undergone a partial lateral meniscectomy over two years earlier. He also indicated that appellant had retained 140 degrees of flexion in the left knee and 150 degrees in the right knee, and had no weakness or atrophy of the left lower extremity, no ligament instability and no varus or valgus deformity of the knee. Dr. Koch added that at the arthroscopy appellant was observed to have chondromalacia in the lateral compartment of the left knee. Finally, he concluded that appellant had a 20 percent permanent disability.

By report dated March 19, 1995, Dr. Leonard A. Simpson, an orthopedic surgeon and Office medical adviser, reviewed the relevant medical evidence of record and the examination results provided by Dr. Koch. Dr. Simpson noted that the medical reports provided by Dr. Koch described mild to moderate pain on occasion with pain along the medial side of the knee with no crepitation of significance and no significant effusion. He noted that appellant had had difficulties with weight bearing and cold weather, and stated that these were subjective complaints which may interfere with activity and would be graded a maximal grade III of the grading scheme or a maximal 60 percent of branches (femoral nerve-maximal 7 percent for dyesthesia) for a 4 percent impairment of the left lower extremity. Dr. Simpson further noted that Dr. Koch's range of motion testing revealed full extension at 0 with flexion to 140 degrees, which according to the A.M.A., *Guides*, Fourth Edition, would be equivalent to a 0 percent impairment. In addition, Dr. Koch noted that as appellant exhibited no atrophy or weakness and leg girth measurements were equal, these measurements represented zero percent impairment. Dr. Simpson further noted that appellant's partial lateral meniscectomy was equivalent to a two percent impairment, but that there was no additional impairment for patellectomy or varus or valgus deformity, as these conditions were not present. Dr. Simpson recommended assigning a

five percent impairment rating for the chondromalacia in the left lateral compartment seen at arthroscopy, noting that this would be equivalent to patello-femoral pain with crepitation without roentgenographic findings pursuant to Table 62, chapter 3 of the *Guides*. Dr. Simpson concluded that the 5 percent impairment for chondromalacia, combined with the 4 percent for the subjective complaints and the 2 percent for the partial lateral meniscectomy would be equivalent to an 11 percent impairment of the left lower extremity with maximum medical improvement reached no later than October 19, 1994, approximately 1 year after the 1993 arthroscopic procedure.

In a decision dated April 20, 1995, the Office granted appellant a schedule award for an 11 percent permanent impairment of the left lower extremity for the period October 19, 1994 to May 28, 1995.

In a letter dated May 10, 1995, appellant requested reconsideration of the Office's April 20, 1995 decision. In support of his request appellant submitted the May 10, 1995 report of Dr. Koch in which the physician indicated, in pertinent part, that appellant had recently fallen due to weakness in his legs.

In a merit decision dated May 22, 1995, the Office determined that the evidence submitted and the arguments presented were insufficient to warrant modification of the prior decision.

The Board finds that appellant has no more than an 11 percent permanent impairment of the left lower extremity.

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 for all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimant's seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁴

In the present case, the Office medical adviser determined, based on the A.M.A., *Guides*, as applied to the medical findings of Dr. Koch, appellant's attending physician, that appellant's loss of range of motion equated to an 11 percent permanent impairment of the left lower extremity. Although Dr. Koch stated in his form reports dated on or around October 18, 1994 that appellant had a 20 percent permanent impairment of the left knee, the physician did not correlate this estimate of impairment to the applicable portions of the A.M.A., *Guides* or

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287, 1290 (1989); *Francis John Kilcoyne*, 38 ECAB 168, 170 (1986).

otherwise attempt to explain the basis for this determination. The Board has held that when an attending physician's report is not based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly used the A.M.A., *Guides*.⁵ The Board concludes that in the present case, the Office medical adviser properly applied the A.M.A., *Guides* to the description of the impairment provided by Dr. Koch.

The decisions of the Office of Workers' Compensation Programs dated May 22 and April 20, 1995, and November 14, 1994 are hereby affirmed.

Dated, Washington, D.C.
April 2, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁵ *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).