U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD L. TERRELL and DEPARTMENT OF THE AIR FORCE, MILITARY AIRLIFT COMMAND, ANDREWS AIR FORCE BASE, Md.

Docket No. 96-1385; Submitted on the Record;
Issued April 21, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has more than a seven percent permanent impairment of the lower extremity for which he has received a schedule award.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

On March 12, 1992 appellant, a firefighter, twisted his right knee when stepping down from a vehicle. Appellant underwent an arthrotomy of the right knee, with total medial meniscectomy and reconstruction of the medial ligament and medial capsule on July 7, 1992. The Office of Workers' Compensation Programs accepted appellant's claim and authorized appropriate compensation benefits. On August 20, 1993 appellant requested payment of a schedule award. On June 13, 1995 the Office granted appellant a schedule award for seven percent permanent impairment of the right lower extremity. An Office hearing representative affirmed the schedule award by decision dated January 31, 1996.

Section 8107 of the Federal Employees' Compensation Act provides that if there is a permanent impairment involving the loss or loss of use of a member of function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[1] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[2]

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[1] 5 U.S.C. § 8107.

[2] *James J. Hjort*, 45 ECAB 595 (1994).

In a report dated September 17, 1993, appellant's treating physician, Dr. Rida Azer, a Board-certified orthopedic surgeon, opined that appellant had a 40 percent permanent impairment of the right lower extremity. Dr. Azer did not detail appellant's examination findings and did not indicate how he had calculated appellant's pursuant to the A.M.A., *Guides*. The Board has held that a medical 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.[3]

The Office referred appellant to Dr. J. Michael Jolly, an orthopedic surgeon, for a second opinion evaluation. In a report dated September 20, 1994, Dr. Jolly reported that appellant had not reached maximum medical improvement.

The Office thereafter received a number of reports from Dr. Benjamin Shaffer, a Board-certified orthopedic surgeon. In a narrative report dated March 13, 1995, Dr. Shaffer related that appellant had full extension to 0 degrees, with flexion limited to 130 degrees. On April 13, 1995 Dr. Shaffer completed an Office questionnaire wherein he indicated that appellant had a 15 percent impairment of the right lower extremity due to permanent numbness, mild extensor lag, and loss of medial meniscus. On April 14, 1995 Dr. Shaffer reported that appellant had a 15 percent permanent impairment of the right low extremity as appellant's flexion of the right knee was limited to 130 degrees and as appellant had no medial meniscus remaining. On June 15, 1995 Dr. Shaffer reported that appellant had reached maximum medical improvement. In a report dated September 27, 1995, Dr. Shaffer stated that x-rays of appellant's right knee showed evidence of minimal narrowing of the medial compartment on weight bearing with "perhaps no more than two mm [millimeters] of narrowing." Dr. Shaffer concluded that narrowing of two mm of the medial compartment was one of the definitions of arthritis and was substantiated by magnetic resonance imaging (MRI) scan. Dr. Shaffer continued that pursuant to the *Guides*, fourth edition, page 83, appellant was entitled to an additional disability rating of 8 percent based on the evidence of 2 mm of narrowing on weight-bearing radiographic views. Dr. Shaffer stated that appellant deserved a higher disability rating based on the objective evidence as documented.

An Office medical adviser reviewed the case record on May 31, 1995 and opined that appellant had a 7 percent permanent impairment of the right lower extremity, pursuant to Tables 64 and 41 of the *Guides*. On November 21, 1995 an Office medical adviser reviewed the case record and stated that Dr. Shaffer was misinterpreting the *Guides*. The medical adviser noted Dr. Shaffer's statement that "x-rays show evidence of minimal narrowing of no more than two mm." The medical adviser stated that the additional eight percent impairment rating was allowed when there was only two mm of joint space remaining. He added "this represents a great deal more than minimal narrowing." The medical adviser concluded that appellant had a seven percent permanent impairment of the right lower extremity.[4]

[3] *Annette M. Dent*, 44 ECAB 403 (1993).

[4] If a schedule award is granted for a diagnosed based impairment, an award may not be made for a lesser impairment of the same member due to loss of function.

The Office granted appellant a schedule award for a 7 percent impairment of the right leg based upon Table 64 of the *Guides* which provided diagnosis based impairment estimates for lower extremity impairments. A total medial meniscectomy of the knee is rated pursuant to Table 64 as a 7 percent impairment. The Office did not grant appellant an award for the degenerative changes measured by Dr. Shaffer. In his September 27, 1995 report, Dr. Shaffer concluded that narrowing of two mm of the medial compartment was one of the definitions of "arthritis" provided by the *Guides* and was found on x-ray and MRI examination. Dr. Shaffer properly noted that pursuant to Table 64, a 2 mm narrowing on weight bearing would equal an 8 percent impairment of the lower extremity.[5] The Office medical adviser, however, in reviewing the case record concluded that appellant had less than a two mm narrowing of the joint space.

Section 8123 of the Act provides that if there is a disagreement between the physician making the examination for the United states and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[6]

As a conflict exists in the current medical opinion as to whether appellant is entitled to an additional award for arthritis of the right knee, this case must be remanded for further development of the medical evidence. Upon remand, the Office shall refer appellant to an impairment medical specialist to resolve whether appellant has a permanent impairment of the right knee due to arthritis, pursuant to the *Guides*. After such further development as necessary, the Office shall issue a *de novo* decision.

[5] The Office's procedure manual clarifies that Table 62, Arthritis Based on "Roentgeonographically determined cartilage intervals is not incompatible with Table 64, Diagnosis based impairment estimates. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Award*, Chapter 3.700 (October 1995).

[6] *Shirley L. Steib*, 46 ECAB 309 (1994).

The decision of the Office of Workers' Compensation Programs dated January 31, 1996 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
April 21, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member