

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS MAYO and DEPARTMENT OF THE NAVY ,
NAVAL ACADEMY, Annapolis, MD

*Docket No. 96-1412; Submitted on the Record;
Issued April 10, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has greater than a 38 percent impairment of his left leg for which he received a schedule award.

The Board has duly reviewed the record and finds that appellant has not demonstrated that he has more than a 38 percent impairment of his left leg for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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 Office of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, and the Board has concurred in such adoption as an appropriate standard for evaluating schedule losses.³ Office procedures direct the use of the fourth edition of the A.M.A., *Guides* for all decisions made after November 1, 1993.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ A.M.A., *Guides* (4th ed. 1993); see *Danniel C. Goings*, 37 ECAB 781 (1986).

⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (October 1995) which implemented FECA Bulletin No. 94-4. For schedule awards granted between March 8, 1989 to August 31, 1991, the Office applied the third edition issued in 1988 and for schedule awards granted between September 1, 1991 and October 31, 1993, the Office applied the revised third edition issued in 1990; see FECA Bulletins Nos. 89-39 (September 30, 1989), 91-27 (1991).

Appellant, a 48-year-old electrician, sustained a knee injury on March 27, 1989, due to slipping on a rung of a steel ladder. The Office accepted appellant's claim for a strain of the knee and a medial meniscus tear. Under the care of Dr. Thomas Harries, a Board-certified orthopedic surgeon, appellant underwent a medial meniscectomy on April 21, 1989. Appellant subsequently came under the care of Dr. Eli M. Lippman, a Board-certified orthopedic surgeon, on October 4, 1989. Dr. Lippman provided an estimate of 38.5 percent impairment of the left leg due to the meniscal tear and surgery. By decision dated February 9, 1990, the Office granted appellant an award for 38 percent impairment of the left leg, for the period October 5, 1989 to August 21, 1991.

Appellant obtained further treatment during the spring of 1991, when he stopped work for two weeks in order to undergo a physical therapy program. Appellant complained of continued symptoms, for which he underwent arthroscopic surgery on February 10, 1992, performed by Dr. Lippman. Appellant claimed that his condition did not improve but became worse and he requested an additional schedule award.

On May 12, 1993 the Office referred appellant to Dr. Walter E. Landmesser, a Board-certified orthopedic surgeon, for evaluation of permanent impairment under the third edition, revised, of the A.M.A., *Guides*. In a June 4, 1993 report, Dr. Landmesser reviewed the findings on diagnostic testing which showed degenerative changes, and he noted that he felt appellant's medial meniscus was torn again. He recommended further evaluation and possible surgery by an arthroscopist and referred appellant to Dr. Garrett Lynch, a Board-certified orthopedic surgeon. Dr. Lynch examined appellant on July 21, 1993 and performed surgery on September 13, 1993. Two months after the surgery, appellant requested an additional schedule award based on the compound effect of his surgeries, and the impairment ratings following the surgeries which he felt were cumulative. In a May 27, 1994 report, Dr. Lynch estimated a 25 percent impairment due to pain, loss of motion, atrophy and loss of endurance. He noted that the surgery on September 13, 1993 revealed both a torn left medial meniscus and osteochondral defects of the lateral femoral condyle and patellofemoral sulcus which he graded at Grade III levels with measurements of 25 by 25 millimeters and 30 by 30 millimeters respectively. Dr. Lynch noted in addition, "avulsion sometime in the past of his anterior cruciate ligament where it had been avulsed off the femur and healed to the posterior cruciate ligament."

On October 20, 1994 an Office medical adviser reviewed the report of Dr. Lynch and correlated the findings with the fourth edition of the A.M.A., *Guides*, and calculated a 22 percent impairment of the left leg due to the injury and surgeries. Based on this review, the Office found in a December 15, 1994 decision, that appellant was not entitled to a greater schedule award, as he had already received an award for 34 percent impairment of his left leg.

The Board notes the Office medical adviser correlated the findings of arthritis, the cruciate laxity and the effect of a partial medial meniscectomy, to the appropriate tables of the A.M.A., *Guides*. The Office medical adviser's calculations show that the cartilage interval space of three millimeters was correlated to a seven percent impairment of the leg under the applicable table for impairment due to arthritis.⁵ Under the table listing, "Impairment Estimates for Certain Lower Extremity Impairments," a medial and lateral partial meniscectomy represents a 10

⁵ A.M.A., *Guides* 83, Table 62.

percent impairment of the leg.⁶ Under the same table, he rated cruciate ligament laxity as mild, which correlates to a seven percent impairment of the leg.⁷ Under the Combined Values Chart, he combined 10 with 7 and 7, arriving at a 22 percent impairment of the left leg.⁸

While appellant maintains that the percentage of impairment of 25 percent, as recommended by Dr. Lynch, should be added to the previous amount of impairments calculated by the Office after each prior surgery, the Board notes that the impairment rating is not cumulative in this manner. Appellant may establish entitlement to a greater schedule award if his condition deteriorates further. While appellant claims that his condition deteriorated following the first surgery, and that the second surgery was insufficient, the medical evidence submitted does not establish that he has more than a 38 percent impairment under the A.M.A., *Guides*, as previously awarded.

The decision of the Office of Workers' Compensation Programs dated December 15, 1994 is hereby affirmed.

Dated, Washington, D.C.
April 10, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ *Id.* 85, Table 64.

⁷ *Id.* The Board notes that the assigned amount for a moderate cruciate laxity is 17 percent, which would not cause the award to be greater than the previously awarded 34 percent.

⁸ *Id.* 322-24.