

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT H. VALADEZ and DEPARTMENT OF THE TREASURY,
BUREAU OF ALCOHOL, TOBACCO & FIREARMS, El Paso, Tex.

*Docket No. 96-2548; Submitted on the Record;
Issued August 14, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a 27 percent permanent impairment to his right lower extremity.

The Board has duly reviewed the case record and finds that appellant has no more than a 27 percent permanent impairment to his right lower extremity.

On June 12, 1991 appellant, then a 42-year-old special agent, filed a claim alleging that he sustained a right knee injury in the performance of duty on that date. The Office of Workers' Compensation Programs accepted the claim for an aggravation of degenerative meniscus tear and authorized right knee surgery.

In a treatment note dated February 17, 1994, Dr. Leslie S. Matthews, appellant's treating physician and a Board-certified orthopedic surgeon, indicated that appellant had reached maximum medical improvement and that he had had ongoing symptoms including pain, swelling, stiffness and weakness in his leg. The doctor stated that appellant had post-traumatic degenerative arthritis, muscular atrophy and loss of range of motion of the right knee. He noted: "Given these findings and in consideration of [the] American Medical Association, *Guidelines for Evaluation of Permanent Impairment*, I would assign ... a 35 percent permanent impairment of his right lower extremity."

By letter dated May 10, 1995, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Kevin P. Christensen, a Board-certified orthopedic surgeon, for a second opinion evaluation. The Office requested that Dr. Christensen determine whether appellant had any permanent impairment due to the June 12, 1991 employment injury. In a report dated May 19, 1995, Dr. Christensen stated that, upon physical examination of appellant's right lower extremity, he had minimal effusion of the knee; range of motion was 0 to 110 degrees; a 1 centimeter decrease of thigh circumference as viewed from the left contralateral side; medial and lateral joint tenderness; positive patella grind; moderate crepitation throughout;

and slightly decreased muscle strength. He noted further that appellant had a negative pivot shift, a negative Lachman's sign and no opening with varus and valgus stress. Dr. Christensen also reviewed appellant's December 1993 x-rays and noted that they revealed a "narrowing equaled on the lateral and patella femoral joint," noting that the medial line was narrowed "with osteophytes located on the medial aspect of the distal femur and proximal tibia." Based on his examination and review of the records, Dr. Christensen stated that appellant had degenerative joint disease of the right lower extremity and possible degenerative medial and lateral meniscus. He added that: "Given these findings and in consideration of the A.M.A. *Guides*, I would assign ... a 35 percent permanent impairment of his right lower extremity...."

On October 12, 1995 the Office referred Dr. Christensen's medical report to the Office medical adviser to determine appellant's date of maximum medical improvement and to determine a percentage of impairment to the right lower extremity in accordance with the A.M.A., *Guides*.

In a medical report dated October 13, 1995, the medical adviser reviewed Dr. Christensen's findings and determined that, based on appellant's x-rays revealing a 1 millimeter cartilage interval in the knee, appellant was entitled to a 25 percent permanent impairment rating.¹ The medical adviser further noted that, based on appellant's partial lateral meniscectomy, he had an additional 2 percent permanent impairment² for a total of a 27 percent permanent impairment of the right lower extremity.

The schedule award provisions of the Federal Employees' Compensation Act provide for compensation to employees sustaining impairment from loss, or loss of use, of specified members of the body.³ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.⁴ For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses, and the Board has concurred in such adoption.⁵

In the present case, the attending physician, Dr. Christensen did not explain how the 35 percent rating was calculated under the above standard. The Office referred the case to an Office medical adviser for review of the medical evidence and an opinion as to the degree of permanent impairment in the right leg. The medical adviser correctly noted in his October 13, 1995 report that, under the *Guides*, a 1 millimeter cartilage interval of the knee results in a 25 percent impairment to the leg, and that a partial medial meniscectomy results in a 2 percent impairment

¹ A.M.A., *Guides*, 83, Table 62.

² A.M.A., *Guides*, 85, Table 64.

³ 5 U.S.C. § 8107.

⁴ *Daniel C. Goings*, 37 ECAB 781 (1986).

⁵ *Luis Chapa, Jr.*, 41 ECAB 159 (1989).

to the leg for a total of 27 percent permanent partial impairment of the right lower extremity. It is appellant's burden to submit sufficient evidence to establish his claim.⁶ The medical evidence of record does not establish that appellant has more than a 27 percent permanent impairment to his right leg.⁶

Accordingly, the Board finds that the July 9, 1996 schedule award was properly issued for a 27 percent permanent impairment to the right leg.

The decision of the Office of Workers' Compensation Programs dated July 9, 1996 is affirmed.

Dated, Washington, D.C.
August 14, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁶ See *Annette M. Dent*, 44 ECAB 403 (1993).