

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DANIEL G. GALLEGOS and DEPARTMENT OF THE INTERIOR,  
U.S. GEOLOGICAL SURVEY, Denver, Colo.

*Docket No. 96-472; Submitted on the Record;  
Issued January 16, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he has greater than a 61 percent permanent impairment of his right knee, for which he has received a schedule award.

This is appellant's second appeal before the Board in this case. In the prior appeal the Board remanded the case to the Office of Workers' Compensation Programs for further development.<sup>1</sup>

After further development, appellant's claim was accepted for aggravation of degenerative joint disease of the right knee. Thereafter, appellant requested a schedule award, and his treating orthopedic surgeon, Dr. William J. Vostinak, was asked by the Office to determine the extent of his permanent partial impairment.

By report dated April 19, 1995 Dr. Vostinak reported that appellant had 90 degrees of flexion, an active extension lag of 15 degrees, a 12 degree varus clinical deformity, 2+ crepitus in the medial compartment, 3+ crepitus in the patellofemoral compartment, a complex medial meniscus tear, grade III chondromalacia patella and grade II-III medial joint compartment chondromalacia in both the tibia and the femur. Dr. Vostinak noted that appellant had significant motor and sensory impairment due to his preexisting war wounds, but none due to his federal employment injury. No further impairment rating was given.

On May 16, 1995 an Office medical adviser calculated that appellant had a 35 percent impairment for flexion/extension, a 35 percent impairment for varus deformity, a 5 percent impairment for osteochondral arthritis, including crepitus and a 2 percent impairment for a partial meniscectomy, which, when combined using the Combined Values Table equaled a 61 percent permanent impairment of the right lower extremity. Right leg muscle atrophy was not measured, as the American Medical Association, *Guides to the Evaluation of Permanent*

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<sup>1</sup> Docket No. 93-1248 (issued August 17, 1994).

*Impairment* (Fourth Edition 1993) instructs the rater to compare the circumferences of both lower extremities to determine the degree of atrophy in the affected side, because appellant has only one leg.

On June 5, 1995 the Office granted appellant a schedule award for a 61 percent permanent impairment of his right lower extremity.

By letter dated September 25, 1995, appellant requested reconsideration of the June 5, 1995 decision and in support he submitted a July 18, 1995 report from Dr. I. Stephen Davis, a Board-certified orthopedic surgeon. Dr. Davis noted that appellant had marked varus drift of leg on thigh, gross audible and palpable crepitus with flexion-extension movements, and total wear of the articulating surfaces to the medial compartment. Dr. Davis indicated that appellant was a candidate for a total knee arthroplasty, but that he was reluctant to consider it at that time. The report, however, did not address appellant's percentage of right lower extremity impairment.

Also submitted was a September 21, 1995 note from Dr. Wayne E. Stevens, a Board-certified family practitioner, which stated that appellant "will need a knee replacement on his right knee." Diagnoses were noted as: "[Right] knee arthritis, Degenerative joint disease, [and] Bone on bone, needs knee replacement." No opinion regarding appellant's impairment rating was included.

By decision dated November 8, 1995, the Office denied modification of the schedule award decision finding that the evidence submitted was insufficient to warrant modification of the prior award. The Office noted that neither Drs. Davis or Stevens provided evidence, based upon the fourth edition of the A.M.A., *Guides*, that appellant had any greater than a 61 percent permanent impairment of his right lower extremity. The Office noted that the fact that appellant would need a total knee arthroplasty at some time in the future, did not figure into his current impairment rating.

The Board finds that appellant has no greater than a 61 percent permanent impairment of his right lower extremity, for which he has received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>4</sup> However, neither the Act nor its regulations specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*; *see* 5 U.S.C. § 8107(c).

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> 5 U.S.C. § 8107(c)(19).

awards. The A.M.A., *Guides*, have been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.<sup>5</sup>

The A.M.A., *Guides* standards for evaluating the impairment of extremities are based primarily on loss of range of motion.<sup>6</sup> However, all factors that prevent a limb from functioning normally, including pain or discomfort, should be considered, together with loss of motion, in evaluating the degree of permanent impairment.<sup>7</sup> The A.M.A., *Guides* provides a grading scheme and procedure for determining the impairment of an affected body part due to pain, discomfort, or loss of sensation.<sup>8</sup> The A.M.A., *Guides* also provides impairment ratings of the lower extremities for specific disorders of the knee, such as torn meniscus or meniscectomy, or an arthroplasty.<sup>9</sup>

In the instant case, appellant's treating orthopedic surgeon provided the applicable measurements pertaining to appellant's disability and the Office medical adviser correctly applied the A.M.A., *Guides* to determine that appellant had a 61 percent permanent impairment of his right lower extremity, for which he received a schedule award. The medical evidence appellant submitted after that in support of his request for reconsideration contained no further opinions regarding appellant's impairment rating and made no reference to the A.M.A., *Guides*. Consequently, none of the subsequently submitted medical evidence was relevant to appellant's current impairment determination, or provided grounds to modify the award. The after-submitted evidence merely referred to appellant's future need for a total knee arthroplasty. The Board notes that if, after appellant undergoes a total right knee arthroplasty, he has further impairment, he may apply for any additional schedule award as warranted by the medical evidence.

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<sup>5</sup> *James J. Hjort*, 45 ECAB 595 (1994); *Thomas D. Gauthier*, 34 ECAB 1060 (1983).

<sup>6</sup> *See William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

<sup>7</sup> *See Paul A. Toms*, 28 ECAB 403 (1987).

<sup>8</sup> *See supra* note 5.

<sup>9</sup> *Id.*

Accordingly, the decisions of the Office of Workers' Compensation Programs dated June 5 and November 8, 1995 are hereby affirmed.

Dated, Washington, D.C.  
January 16, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member