

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE J. GREEN and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Baltimore, Md.

*Docket No. 96-648; Submitted on the Record;
Issued January 23, 1998*

DECISION and ORDER

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

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

The Board has duly reviewed the case record and concludes that appellant has not established that he has more than a two percent permanent impairment of the left lower extremity.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant sustained a strain of the left knee and tear of the lateral meniscus of the left knee as a result of his fall on April 28, 1993. Appellant underwent arthroscopic meniscectomy on November 5, 1993. The Office thereafter developed the medical evidence for evaluation of appellant's permanent impairment of the left knee.

On May 17, 1994 Dr. Barry Vogelstein, appellant's treating physician, Board-certified in orthopedic surgery, completed an Office form wherein he indicated that appellant had reached maximum medical improvement on March 21, 1994. Dr. Vogelstein indicated that appellant had retained an active flexion of the left knee of 145 degrees and retained extension of 2 degrees. He did not note that ankylosis was present and indicated that a prosthesis was not required for knee stability. Dr. Vogelstein indicated that appellant had a 10 percent impairment of function due to weakness, atrophy, pain or discomfort and that he recommended an impairment rating of 20 percent of the lower extremity. On July 14, 1994 an Office medical adviser reviewed Dr. Vogelstein's report and indicated that there was no medical evidence to support any impairment of appellant's knee joint due to reduced range of motion or pain. The medical adviser indicated that pursuant to diagnosis based estimates provided on page 85, Table 64, an incomplete meniscal tear with surgical release would equal a 2 percent impairment of the left lower extremity.

On September 13, 1994 the Office granted appellant a schedule award for a two percent permanent loss of use of the left lower extremity.

Appellant disagreed with this award and requested a hearing before an Office hearing representative. A hearing was held on February 3, 1995 at which appellant appeared and testified. At the time of the hearing, appellant submitted a report dated October 29, 1994 from Dr. Allan Macht, a specialist in legal medicine and geriatric internal medicine. Dr. Macht reported that according to the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Table 36, appellant had a 10 percent impairment of his left leg due to tear of the lateral meniscus, and a 10 percent impairment of the left leg for degenerative change of the left knee. Dr. Macht noted that appellant had some atrophy of his left thigh, a Grade II weakness of the left leg, pursuant to Table 11, which equaled a 65 percent impairment of the left leg. He concluded that these values combined for a 24 percent impairment of the left leg due to pathology of the left knee and loss of strength of the left leg. Finally Dr. Macht noted that appellant had a limp and pain in the knee, thus he recommended a 30 percent permanent impairment rating of appellant's left knee and leg. On May 23, 1995 the Office medical adviser reviewed Dr. Macht's report and noted that appellant's surgical notes indicated a finding at the time of surgery of a plica and tear of the lateral meniscus. The medical adviser stated that there was no rating allowable for a "plica" and that the partial lateral meniscal tear resulted in a two percent permanent impairment.

By decision dated May 30, 1995, the Office hearing representative affirmed the decision dated September 13, 1994. The hearing representative noted that Dr. Macht had improperly used the third, rather than the fourth edition of the *Guides* and that the Office medical adviser had correctly applied the clinical findings to the standards contained in the fourth edition of the *Guides*, therefore his opinion, constituted the weight of the medical evidence. The Board adopts the findings of the Office hearing representative.

On September 21, 1995 appellant again requested that the Office reconsider his claim. Appellant submitted another report from Dr. Macht. In his October 26, 1994 report, Dr. Macht reported that pursuant to the fourth edition of the *Guides* appellant had an impairment for pain, discomfort, stiffness and limp of 11 percent, and an additional impairment due to weakness atrophy, pain or discomfort pursuant to Tables 38 and 39, of Grade 4, resulting in a 17 percent impairment, in addition to the 2 percent impairment for lateral meniscectomy of Table 64. On October 3, 1995 the Office denied modification of the prior decision, after merit review.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation that is to be paid for permanent loss of use of the members of the body that are listed in the schedule. 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 determination is a matter which rests in the sound discretion of the Office. As a matter of administrative practice the Board has stated: "For consistent results and to insure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of

tables. The Office has adopted and the Board has approved of the A.M.A., *Guides* as the uniform standard applicable to all claimants.¹

The Board notes that the medical adviser alternatively utilized the diagnosis-based estimates of impairment provided in the fourth edition of the *Guides*. As stated in Chapter 3.2i of the *Guides*,² some impairment estimates are assigned more appropriately on the basis of a diagnosis than on the basis of findings on physical examination, if for example appellant has a good return of function following surgical treatment. The evidence of record indicates that appellant does not have a loss of range of motion of the left knee. Furthermore, the evidence does not indicate that appellant has sustained a nerve injury which would cause pain, weakness or loss of sensation of the left knee. The Board notes that while Dr. Vogelstein and Dr. Macht in his October 26, 1994 report attempted to evaluate appellant's impairment pursuant to the fourth edition of the *Guides* and assign impairment functions for pain and weakness of appellant's left knee, a diagnosis-based estimate of impairment was more appropriate in this case. Appellant's treating physicians never related that appellant had nerve damage which could account for appellant's complaints of pain and discomfort. Furthermore, appellant's treating physicians never explained pursuant to the *Guides* why appellant would have weakness of the knee, given his normal range of motion of the knee, and how such weakness of the knee was measured. The Board notes that appellant's treating physicians failed to provide a complete report upon which a schedule award could be calculated under the A.M.A., *Guides*. The Board notes that the guidelines were prepared to establish reference tables and evaluation protocols, which if followed, may allow the clinical findings of the physician to be compared directly with the impairment criteria and related to impairment percentages. While the medical opinion of the treating physician might be accorded some greater weight, his or her clinical data must be readily extrapolated and evaluated within the tables and guidelines as presented.³ As appellant's treating physicians did not provide the factual basis for evaluation of appellant's knee impairment pursuant to the requirements of the fourth edition of the *Guides*, the Office properly utilized the diagnosis-based estimate as the basis of the schedule award provided by the Office medical adviser.

¹ A. *George Lampo*, 45 ECAB 441 (1994).

² *Guides*, at page 3/84.

³ *Charles Dionne*, 38 ECAB 306 (1986).

The decisions of the Office of Workers' Compensation Programs dated October 3 and May 30, 1995 are hereby affirmed.

Dated, Washington, D.C.
January 23, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member