

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS S. DYMOND and GENERAL SERVICES ADMINISTRATION,
FEDERAL SUPPLY SERVICE, Philadelphia, Pa.

*Docket No. 96-1391; Submitted on the Record;
Issued June 19, 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 of his left lower extremity for which he received a schedule award.

The Board finds that appellant has no more than a 27 percent permanent impairment of his left lower extremity for which he received a schedule award.

The Office of Workers' Compensation Programs accepted that appellant sustained injuries in the performance of duty on December 5, 1990 including a torn meniscus in the left knee, and authorized a partial medial meniscectomy. The Office also accepted degenerative arthritis of the left knee and authorized a high tibial osteotomy. Appellant requested a schedule award on January 19, 1994 and by decision dated April 11, 1995 the Office granted appellant a schedule award for 27 percent permanent impairment of his left lower extremity. Appellant requested an oral hearing and by decision dated January 10 and finalized January 16, 1996 the hearing representative affirmed the Office's decision.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants the Office adopted the American Medical

¹ 5 U.S.C. § 8107.

² 20 C.F.R § 10.304.

Association, *Guides to the Evaluation of Permanent Impairment*³ as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁴

In this case, appellant submitted a report from his attending physician, Dr. David Weiss, an osteopath. Dr. Weiss stated appellant had two percent impairment due to partial left medial meniscectomy, and 25 percent impairment due to post tibial osteotomy with arthritis. Both of these impairment ratings are in accordance with the A.M.A., *Guides*⁵ and were relied upon by the Office medical adviser in reaching appellant's impairment rating. Dr. Weiss also stated that appellant had 17 percent impairment due to muscle weakness and 15 percent impairment due to loss of range of motion. As the Office medical adviser noted, the A.M.A., *Guides* provide that either the diagnostic or examination criteria should be used in determining impairment, whichever provides the greater rating.⁶ In this case, the examination criteria as calculated by Dr. Weiss would provide the greater rating. However, Dr. Weiss' findings are not correlated with the A.M.A., *Guides* and the Board is unable to determine how he reached these ratings.

Dr. Weiss found that appellant had a left lower extremity limp, tenderness over the medial joint space and medial midline. He noted mild instability and quadriceps atrophy of three centimeters. Dr. Weiss stated appellant had quadriceps muscle weakness and crepitus on active range of motion of the left knee. He stated range of motion revealed flexion-extension of "0-90/120 degrees with pain." Dr. Weiss found appellant had difficulty squatting and that knee circumference was 42 on the left and 39 on the right.

The A.M.A., *Guides* provide several different methods for determining impairment due to gait derangement including arthritic degeneration or muscle weakness.⁷ Dr. Weiss did not indicate which method he chose in rating this impairment. Dr. Weiss found that appellant had three centimeters of quadriceps atrophy. This is a 10 percent impairment in accordance with the A.M.A., *Guides*.⁸ However, the A.M.A., *Guides* also provide that diminished muscle function should be estimated under either gait derangement, muscle atrophy, manual muscle testing or peripheral nerve injury.⁹ Dr. Weiss did not provide his measurements of muscle weakness in accordance with the A.M.A., *Guides* and the Board is unable to determine how he reached the impairment rating of 17 percent.

The A.M.A., *Guides* provide that knee flexion of less than 110 degrees is a 10 percent impairment.¹⁰ Dr. Weiss stated that appellant's valgus stress test was positive, but did not

³ A.M.A., *Guides*, 4th ed. (1993).

⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ A.M.A., *Guides*, 85, Table 64.

⁶ A.M.A., *Guides*, 84.

⁷ *Id.* at 75.

⁸ *Id.* at 77, Table 37.

⁹ *Id.* at 76.

¹⁰ *Id.*, 78, Table 41.

provide any degree of motion by which this impairment could be correlated with the A.M.A., *Guides*. Furthermore, the A.M.A., *Guides* provide that if impairment is estimated on loss of motion, it should not be estimated on the basis of muscle atrophy also.¹¹ Therefore, based on Dr. Weiss' findings as correlated with the A.M.A., *Guides*, appellant's impairment rating would be 10 percent, as either range of motion or muscle atrophy can be utilized. Therefore, the Board finds that the Office medical adviser properly determined that appellant received a greater impairment rating based on diagnostic criteria.

Appellant's attorney alleged that appellant was entitled to an additional impairment rating due to left muscle weakness, range of motion deficit or gait derangement which have been addressed herein. He also alleged that appellant was entitled to an additional impairment rating due to crepitus and shortening of his leg. There is no medical evidence in the record supporting that appellant has experienced a shortening of his leg due to his accepted employment injury and the A.M.A., *Guides* do not provide an impairment rating for crepitus. There is no medical evidence of record in accordance with the A.M.A., *Guides* that appellant has more than 27 percent permanent impairment of his left lower extremity.

The decisions of the Office of Workers' Compensation Programs dated January 16, 1996 and April 11, 1995 are hereby affirmed.

Dated, Washington, D.C.
June 19, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹¹ *Id.* at 78.