

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMOTHY AYERS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Waco, Tex.

*Docket No. 96-1778; Submitted on the Record;
Issued June 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he has more than an eight percent permanent partial impairment of the right lower extremity, for which he has received a schedule award.

The Board has duly reviewed the evidence of record in this appeal and finds that appellant has failed to establish that he has more than an eight percent permanent partial impairment of the right lower extremity, for which he has received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation,² 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 of loss of use.³ 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 under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

In the present case, appellant, then a nursing assistant, filed a traumatic injury claim (Form CA-1) on August 11, 1993 alleging that on that date he sustained a right knee and right side injury when he slipped in a puddle of water.⁵ Appellant stopped work on August 12, 1993.

The Office of Workers' Compensation Programs accepted appellant's claim for a lumbar sprain and an aggravation of pre-existing chondromalacia patella/bilateral.

Appellant filed a claim for a schedule award (Form CA-7) on July 31, 1995.

The Office received the August 9, 1995 medical report of Dr. Gary L. Becker, a Board-certified orthopedic surgeon and appellant's treating physician, indicating that appellant had a 19 percent permanent partial disability of the right lower extremity based on the 3rd edition of the A.M.A., *Guides*. Dr. Becker stated that this impairment rating would convert to a seven percent total body impairment.

By letter dated September 19, 1995, the Office advised Dr. Becker to determine the degree of permanent impairment of appellant's lower extremities as a result of his employment-related back condition based on the 4th edition of the A.M.A., *Guides*. The Office noted that appellant could not receive a schedule award for loss of use of the spine.

In response to its September 19, 1995 letter to Dr. Becker, the Office received a December 19, 1995 medical report of Dr. William E. Blair, Jr., a Board-certified orthopedic surgeon, which was written to Dr. Becker.⁶ In his report, Dr. Blair indicated a review of appellant's medical records and opined that based on chapter 3 of the 4th edition of the A.M.A., *Guides*, appellant did not have any impairment of the lumbar spine. Regarding appellant's right knee, Dr. Blair noted that appellant had been diagnosed as having Grade II chondromalacic changes of the medial femoral condyle with an intact medial and lateral meniscus and an intact anterior and posterior cruciate ligament. Dr. Blair stated that motion analysis was conducted and that "[appellant] was noted to have active flexion to 125 on the right and to 130 on the left. Utilizing Table 41 on page 78, [appellant] shows maximal motion arcs greater than those listed upon which an impairment can be designated. [Appellant] also does not show a significant varus

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ Previously, appellant filed a claim for a right knee injury sustained on August 19, 1992. Appellant underwent knee surgery on November 5, 1992.

⁶ Appellant was referred to Dr. Blair by Georgia of Dr. Becker's office.

or valgus angle or a flexion contracture which meets qualification based on Table 41.” Dr. Blair also stated:

“[A]ddressing Table 64 on page 85, [appellant] is noted to have an arthroscopic diagnosis of Grade II chondromalacic changes. [Appellant] does not meet clinical criteria within these specific disorders of Table 64 to assign an impairment. [Appellant] also does not meet criteria on Table 53 for ankylosis and also does not meet criteria under Table 54 for internal and external malrotation.

“Based on Table 37, which deals with leg muscle atrophy, [appellant] was noted to have a 2 cm. deficiency of the right calf in comparison of that of the left. [Appellant] does meet criteria within Table 37B, rendering a 1% impairment whole person.

“[Appellant’s] previous X-rays showed evidence of chondromalacic changes over the medial femoral condyle. According to Table 62 on page 83, [appellant] must show a cartilage interval of less than 3 millimeter[s] to qualify for impairment rating based on Table 62. Current clinical data does not show clinical criteria to support the assignment of impairment based on cartilage interval less than 3 millimeters. As such, no additional impairment is rendered within this subcategory.

“In combining the above impairments, [appellant] is granted a 1% impairment whole person based on residual calf atrophy associated with the work [-]related knee incident of August 11, 1993.”

Dr. Blair noted that appellant underwent ergometric analysis and that utilizing the Jamar Hand Dynamometer, appellant demonstrated performance curves that were inappropriate bilaterally and below the normative ranges. Dr. Blair then noted that there were also 8 out of 10 excessive coefficients of variation. Dr. Blair concluded that appellant was granted a one percent impairment of the whole person based on the 4th edition of the A.M.A., *Guides* that was causally related to the August 11, 1993 employment injury. Dr. Blair further opined that appellant had reached maximum medical improvement as of July 28, 1995.

The Office based its assessment of the impairment of appellant’s lower right extremity on the Office medical adviser’s March 1, 1996 medical report. In this report, the Office medical adviser agreed with Dr. Blair that appellant had reached maximum medical improvement on July 28, 1995. The Office medical adviser determined that appellant had an eight percent permanent partial impairment of the right lower extremity for calf muscle atrophy based on Dr. Blair’s report and the 4th edition of the A.M.A., *Guides*. In so doing, the Office medical adviser noted that Dr. Blair found that appellant’s right calf was two centimeters smaller than the left and stated that Table 37 on page 77 of the A.M.A., *Guides* awarded a permanent partial

impairment value of eight percent for that amount of atrophy. The Office medical adviser further stated that:

“Dr. Blair awards a permanent partial impairment value of 1% of the whole person for the 2 centimeters of calf atrophy. This is approximately equal to 3% permanent partial impairment of the right lower extremity; therefore, my estimate is larger. I assume that Dr. Blair misread Table 37, page 77, since he did not give the correct award for the amount of muscle atrophy.”

By decision dated March 14, 1996, the Office granted appellant a schedule award for an eight percent permanent partial loss of use of the right lower extremity for the period July 28, 1995 through January 5, 1996.

The Board has reviewed the evaluation of the Office medical adviser and notes that it is in accordance with the appropriate standards of the 4th edition of the A.M.A., *Guides*. The Office medical adviser reviewed the report of Dr. Blair, his findings on physical examination of appellant and applied those findings to the A.M.A., *Guides*. Although Dr. Blair found that appellant had a whole person impairment, the Board notes that under the Act a schedule award is for permanent loss or use of a member or organ specifically enumerated under the Act and implementing federal regulations and not for the body as a whole.⁷ For this reason, the Office medical adviser properly applied the findings of Dr. Blair to the protocols of the *Guides* in finding an eight percent impairment of the right lower extremity. Therefore, the Board finds that appellant is not entitled to more than an eight percent permanent partial impairment of the right lower extremity, for which he has received a schedule award.

⁷ See *James E. Mills*, 43 ECAB 215 (1991).

The March 14, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member