

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN E. BEATTY and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

*Docket No. 96-1253; Submitted on the Record;
Issued May 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has greater than a two percent permanent impairment of his left leg for which he received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for a left medial meniscus tear and arthroscopic knee surgery.

In a report dated September 20, 1994, Dr. Ronald B. Wolfson, a Board-certified orthopedic surgeon and a second opinion physician, considered appellant's history of injury, performed a physical examination, and diagnosed medial meniscus tear of the left knee industrially related to the November 19, 1981 employment injury. He stated that appellant "probably" had some limitation of flexion at the time because he had lost 15 degrees of flexion. Dr. Wolfson also stated that appellant's arthritis was related to his obesity and to problems that he had with his right knee more than the medial meniscus in the left knee.

In a report dated May 18, 1995, the District medical adviser, using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994), rated appellant two percent permanently impaired to his left lower extremity. In making this rating, she reviewed Dr. Wolfson's September 20, 1994 report and used Table 64, p. 85 of the A.M.A., *Guides* addressing partial medial or lateral meniscectomy.

By decision dated August 22, 1995, the Office awarded appellant a schedule award for a two percent impairment of the left leg.

By letter dated January 9, 1996, appellant requested reconsideration of the Office's decision and submitted evidence to support his claim consisting of a medical report from Dr. Joseph Pramuk, a family practitioner, dated December 31, 1995. In his December 31, 1995 report, Dr. Pramuk considered appellant's history of injury, performed a physical examination and reviewed the results of a July 19, 1995 magnetic resonance imaging (MRI) scan showing an

oblique tear of the posterior horn of the medial meniscus and significant intrasubstance degeneration of the lateral meniscus. He diagnosed degenerative disease of the articular cartilage and menisci on both knees with significant osteophytosis and spurring of the tibiofemoral and patellofemoral joints. Dr. Pramuk placed restrictions on appellant.

On January 26, 1996 the District medical adviser stated that there was no additional award based on Dr. Pramuk's December 31, 1995 report. She stated that he made no clear connection between the degenerative changes in the knee and November 19, 1981 employment injury and that, further, Dr. Wolfson stated on September 20, 1994 that appellant's arthritis was related to his obesity and his right knee problems.

By decision dated February 2, 1996, the Office denied appellant's reconsideration request.

The Board finds that appellant has no greater than a two percent impairment to his left leg.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² For consistent results and to ensure equal justice under the law to 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.³

In the present case, Dr. Wolfson's September 20, 1994 report and Dr. Pramuk's December 31, 1995 report do not establish that appellant had more than a two percent impairment to his left leg because their reports do not contain a rating using the A.M.A., *Guides*. The Board requires that a physician properly use the A.M.A., *Guides* in assessing appellant's impairment.⁴ Based on her review of Dr. Wolfson's September 20, 1994 report, the District medical adviser properly used the A.M.A., *Guides* in finding that appellant had a two percent impairment to his left leg. She properly assessed the rating based on appellant's partial meniscus tear of the left knee using Table 64, p. 85 of the A.M.A., *Guides*. Further, on January 26, 1996 the District medical adviser found that Dr. Pramuk's December 31, 1995 report provided no basis for an additional award because Dr. Pramuk made no clear connection between the degenerative changes in appellant's knee and the November 19, 1991 employment injury and

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁴ *See Paul R. Evans*, 44 ECAB 646, 651 (1993); *see Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

Dr. Wolfson stated in his September 20, 1994 report that appellant's arthritis was due to his obesity and his right knee problems. The District medical adviser's opinion is rational and consistent with the medical evidence of record. Her opinion therefore constitutes the weight of the evidence.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated February 2, 1996 and August 22, 1995 are hereby affirmed.

Dated, Washington, D.C.
May 8, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member