

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDRICK BASS and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Pensacola, Fla.

*Docket No. 96-566; Submitted on the Record;
Issued November 13, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing greater than a 14 percent permanent impairment of the left lower extremity for which he received a schedule award.

On April 1, 1989 appellant, then a 38-year-old firefighter, filed a claim, alleging that he injured his left knee when it came in contact with a ladder rung during a training exercise. The Office of Workers' Compensation Programs accepted appellant's claim for left knee strain. Appellant received appropriate compensation for all periods of temporary total disability and partial disability.

On June 11, 1992 appellant filed a claim for a schedule award. On January 12, 1993 the Office granted appellant a schedule award for a 10 percent permanent impairment of the left lower extremity for the period December 13, 1992 to July 2, 1993 for 28.8 weeks of compensation. By letters dated August 13 and September 20, 1993, appellant requested reconsideration of the schedule award and submitted additional medical reports he believed established greater than a 10 percent impairment of his left lower extremity. By decision dated October 4, 1993, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the January 12, 1993 schedule award. By decision dated February 16, 1995, the Office awarded appellant an additional schedule award for a four percent additional permanent impairment to the left lower extremity for the period December 6, 1994 to February 24, 1995 for 11.52 weeks of compensation. By decisions dated March 22 and October 12, 1995, the Office found that appellant's requests for reconsideration were insufficient to warrant review of its prior decisions. By decision dated May 31, 1995, the Office denied appellant's request for a hearing on the grounds that he had previously requested reconsideration and had not presented any compelling evidence to substantiate his request.

The Board has duly reviewed the case record in the instant appeals, and finds that this case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) (A.M.A., *Guides*) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.³

In the instant case, appellant submitted reports from Dr. Andrew C. Gygi, a Board-certified orthopedic surgeon. On May 16, 1994 the Office requested findings from Dr. Gygi to determine if the degree of appellant's permanent impairment was greater than 10 percent. In a report dated May 24, 1994, Dr. Gygi diagnosed post-traumatic arthritis and found a 15 percent impairment of the whole man under Table 64 of the fourth edition of the A.M. A. *Guides* if appellant required knee surgery. On September 12, 1994 the Office requested additional information from Dr. Gygi, noting that his impairment rating should be based solely on appellant's current diagnosis of post-traumatic arthritis and should be explained with the use of the x-ray cartilage interval listed in Table 62 of the A. M.A. *Guides*. In a report dated September 20, 1994, Dr. Gygi found a 25 percent permanent impairment of the left lower extremity based on Table 62 of the A.M.A., *Guides*. He noted that appellant's date of maximum medical improvement was May 1, 1994. On December 1, 1994 the Office advised Dr. Gygi that appellant's case required that he administer a standard roentgenogram taken with the patient standing 36 inches from the x-ray tube with the beam level to the joint. In a report dated December 6, 1994, Dr. Gygi indicated that he had made such an x-ray which revealed a slight narrowing of the articular cartilage over the medial aspect of the knee joint and was otherwise unremarkable. He indicated that his previous assessment of appellant's impairment remained unchanged.

An Office medical adviser reviewed Dr. Gygi's December 6, 1994 report and interpreted his statement that there was a slight narrowing of the articular cartilage to mean that there was a 3 millimeter cartilage interval which equaled a seven percent impairment under Table 62 of the A.M.A., *Guides*. He also found a 7 percent impairment for aching pain at Table 68 of the A.M.A., *Guides*. The Office medical adviser therefore found a total of a 14 percent permanent impairment of the left lower extremity.

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

The Office medical adviser's opinion goes beyond the scope of the opinion provided by Dr. Gygi and his interpretation of the cartilage interval is speculative inasmuch as Dr. Gygi did not provide an exact measurement, noting only that there was a "slight narrowing" of the cartilage. In addition, the original schedule award was for a loss of range of motion in the knee, not due to a narrowing of the cartilage interval and pain, as measured by the Office medical adviser. Thus, the record lacks a complete description of appellant's various impairments as measured under the A.M.A., *Guides*. The Office should undertake to develop the medical evidence for a redetermination of the schedule award.⁴ This case will be remanded for an appropriate medical examination which describes appellant's impairment in accordance with the standards of the A.M.A., *Guides*. After such further development as the Office deems, necessary a *de novo* decision should be issued.⁵

The decisions of the Office of Workers' Compensation Programs dated October 12, May 31, March 22 and February 16, 1996 are hereby set aside, and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
November 13, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁴ See *Walter R. Malena*, 46 ECAB 983 (1995).

⁵ Inasmuch as the case is remanded for further development of the schedule award issue, the Board need not address any issues related to merit review of this issue or appellant's request for a hearing.