

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE E. CLARK, JR. and DEPARTMENT OF THE NAVY,
NOLFOLK NAVAL SHIPYARD, Portsmouth, Va.

*Docket No. 96-2643; Submitted on the Record;
Issued October 7, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained greater than a 52 percent permanent impairment of his right lower extremity, for which he received a schedule award.

On November 6, 1984 appellant, then a 32-year-old pipefitter, filed a notice of traumatic injury and claim, alleging he sustained an injury to his right knee while descending a ladder on November 5, 1984.

The Office of Workers' Compensation Programs accepted this claim for right knee strain. On April 1, 1987 appellant filed a new notice of traumatic injury and claim, alleging that on March 31, 1987 he injured his back and right knee while in the performance of duty. The Office accepted this claim for back strain and right knee strain. On June 22, 1989 appellant filed a claim for a schedule award. On August 28, 1989 appellant received a schedule award for a 52 percent permanent impairment of his right lower extremity for a total of 149.76 weeks of compensation for the period of July 3, 1989 to May 16, 1992. Appellant received appropriate compensation for intermittent periods of temporary total disability until he was placed on the periodic rolls in November 1992. The Office approved and appellant underwent additional arthroscopic surgery on his right knee in 1992.

On October 7, 1993 appellant filed a claim for a schedule award, alleging additional impairment of his right lower extremity. In a decision dated December 10, 1993, the Office denied modification of its August 28, 1989 schedule award. However, by decision dated August 18, 1994, an Office hearing representative set aside the Office's December 10, 1993 decision on the grounds that the evidence of record demonstrated additional impairment and remand was warranted for further development of the medical evidence. Subsequently, in a decision dated December 13, 1994, the Office denied appellant's claim for an additional schedule award. In a decision dated August 17, 1995 and finalized August 18, 1995, an Office hearing representative affirmed the Office's December 13, 1994 decision.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision regarding whether appellant has more than a 52 percent permanent impairment of his right lower extremity, for which he received a schedule award.¹

Section 8107 of the Federal Employees' Compensation Act² and its implementing regulations³ 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* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.⁴

In the present case, the Office referred appellant together with a statement of accepted facts and his medical record to Dr. Sidney W. Tiesenga, a Board-certified orthopedic surgeon, for an impairment rating. In a report dated December 6, 1994, Dr. Tiesenga found a 37 percent permanent impairment of the right lower extremity in accordance with the fourth edition of the A.M.A., *Guides*. Prior to referral of this case to Dr. Tiesenga, appellant submitted a report dated June 27, 1994 by Dr. Sidney S. Loxley, a Board-certified orthopedic surgeon and appellant's treating physician, in which he found a 75 percent permanent impairment of the right lower extremity based apparently on the fourth edition of the A.M.A., *Guides*. Subsequently, appellant submitted a June 6, 1995 report by Dr. Loxley in which he reiterated his finding of a 75 percent permanent impairment of the right lower extremity and provide ratings and calculations based on the fourth edition of the A.M.A., *Guides*. The reports by Drs. Tiesenga and Loxley were both reviewed by Office medical advisers, who concurred with Dr. Tiesenga's impairment rating and provided recalculations of the medical findings in the reports based on the fourth edition of the A.M.A., *Guides*.

However, in the present case, the third edition of the A.M.A., *Guides* provides the appropriate standards for evaluating appellant's right lower extremity impairment since appellant's initial schedule award for impairment was granted by the Office in August 1989, prior to the effective dates of either the third edition revised or the fourth edition of the A.M.A., *Guides*.⁵ Therefore, none of the calculations provided by the physicians in this case

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on August 22, 1996, the only decision before the Board is the Office's August 18, 1995 decision. See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8107 (c).

³ 20 C.F.R. § 10.304.

⁴ *Quincy E. Malone*, 31 ECAB 846 (1980).

⁵ See FECA Bulletin No. 94-4 (issued November 1, 1993). Board precedent and Office procedure indicate that schedule awards should be evaluated using the edition of the A.M.A., *Guides* originally used by the Office for calculation purposes. See *Roy L. Brandt*, 41 ECAB 569 (1990); Federal (FECA) Procedure Manual, Part 2 --

were in accordance with the appropriate standards. The case will be remanded to the Office for further evaluation of the permanent impairment of appellant's right lower extremity in accordance with the appropriate standard of the A.M.A, *Guides* as set forth in the third edition. This evaluation should include an assessment of appellant's impairment as it relates to his right knee surgeries, range of motion, arthritis with accompanying symptoms and pain.

The decision of the Office of Workers' Compensation Programs dated August 17, 1995 and finalized August 18, 1995 is hereby set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
October 7, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member