U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN A. HEIBEL and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 98-363; Submitted on the Record;*
*Issued December 8, 1999*

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DECISION and ORDER

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

The issue is whether appellant has greater than a one percent permanent impairment of the right lower extremity for which he received a schedule award.

On June 30, 1993 appellant, then a 43-year-old distribution clerk, sustained a contusion of the right knee and right knee strain, and a right meniscal tear in the performance of duty.

In a report dated August 1, 1995, Dr. Marc W. Weise, a Board-certified orthopedic surgeon, related that appellant underwent arthroscopy of the right knee with chondroplasty of the patella and noted that the medial meniscus was intact. Dr. Weise's preoperative diagnosis was "Medial meniscus tear right knee" but his postoperative diagnosis was "Articular cartilage fracture of medial femoral condyle right knee. Chondromalacia patella."

In a report dated August 22, 1996, Dr. Weise stated that appellant had undergone a partial meniscectomy and had a five percent permanent impairment of the lower extremity as a result of a meniscus tear and subsequent partial medial meniscectomy. He stated that appellant was able to perform full duties with minimum discomfort.

In a report dated February 17, 1997, the Office's district medical director stated that appellant did not have a partial medial meniscectomy as Dr. Weise's August 22, 1996 operative report indicated. He stated that Dr. Weise's operative report clearly indicated that appellant was found to have no abnormality of the medial meniscus. The district medical director stated that appellant should be evaluated by a physician skilled in the use of the fourth edition (1993) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to determine whether he had any permanent impairment following his surgically treated chondromalacia.

By letter dated April 9, 1997, the Office referred appellant to Dr. John A. Gragnani, a Board-certified physiatrist, for an examination and evaluation as to whether appellant had any permanent impairment causally related to his employment injury.

In a report dated April 30, 1997, Dr. Gragnani provided a history of appellant's condition and findings on examination and indicated that he had reviewed x-rays, including a July 13, 1995 x-ray, and magnetic resonance imaging (MRI) scans. He stated that these studies revealed a Baker's cyst in the right knee joint but no evidence of any other significant abnormality. Dr. Gragnani stated:

> "I consulted Table 64 on page 85 of the [A.M.A., *Guides*] and found this to be not applicable to [appellant's] situation. Then, utilizing pages 75 to 89, I went to ... Table 41 [at page 78] and found no evidence of any loss or impairment. I also consulted Tables 20 and 21, page 151, for any loss on motor power or sensation ... Table 21 on muscle strength was considered to be 0 [percent] deficit since [appellant] had full power in the right lower extremity. Using Table 20 for sensory and pain impairments, particularly in reference to pain, I selected Class III and gave [appellant] 60 [percent] sensory impairment. I compared that to the table on page 89, Table 68, for the femoral nerve. Using femoral nerve sensory impairment, I gave [appellant] 2 [percent] as prescribed by the table, multiplying this times the 60 [percent] for the sensory pain impairment levels from Table 20. This gave an impairment rating of 1.2 [percent] for sensory and pain changes to the right lower extremity. Therefore, utilizing the range of motion tables in Tables 20 and 21, I attempted to evolve the impairment rating. No other ratings appeared to be appropriate.... Therefore, total impairment for [appellant] at this time is 1.2 [percent] of the right lower extremity as calculated from the [A.M.A., *Guides*], fourth edition."

In a report dated May 12, 1997, the district medical director stated that Dr. Gragnani had correctly applied the A.M.A., *Guides* to his findings on examination in reaching his opinion that appellant had a 1.2 percent permanent impairment, rounded to 1 percent, of the right lower extremity.

By decision dated May 30, 1997, the Office granted appellant a schedule award for 2.88 weeks based upon a 1 percent permanent impairment of the right lower extremity.

By letter dated June 3, 1997, appellant requested a review of the written record by an Office hearing representative.

By decision dated August 4, 1997, the Office hearing representative affirmed the Office's May 30, 1997 schedule award decision.

By letter dated October 9, 1997, appellant requested reconsideration and submitted additional medical evidence.

In a report dated October 9, 1997, Dr. Charles A. Nester, Jr., a Board-certified family practitioner, stated his opinion that appellant had a five percent permanent impairment of the whole person for an intracondylar undisplaced fracture based upon Table 64 at page 85 of the A.M.A., *Guides*. Dr. Nester also stated that appellant, when asked to perform right knee flexion, was only able to sustain a Grade IV movement which equalled a 25 percent motor deficit impairment. He stated that appellant described pain and stiffness present at all times during

ordinary activities and therefore he would place him in Class IV according to Table 20 at page 151 and stated that 80 percent of the 2 percent rating for Table 68 at page 89 for femoral nerve involvement would give appellant a total rating of 1.6 percent.

In a report dated October 22, 1997, the district medical director stated that Dr. Nester had misinterpreted appellant's operative report when he suggested that Dr. Weise found a supracondylar or intracondylar fracture. He stated that Dr. Weise found only a sprain of the cartilage surface and that the concept of an intracondylar or supracondylar fracture was associated with bone injury as well, not just cartilage disruption. Dr. Weise stated:

> "As an aside, even if this diagnosis was correct, the rating derived from Table 64 could only be 5 [percent] of the lower extremity, not 5 [percent] of the body as a whole as suggested incorrectly by Dr. Nester.
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> "Dr. Nester has offered no input in his [October] 9, 1997 letter which could be used to modify [appellant's] previously awarded schedule award for his right lower extremity."

By decision dated October 23, 1997, the Office denied modification of its August 4, 1997 decision.

The Board finds that appellant has no greater than a one percent permanent impairment of the right lower extremity for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[2] including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[3]

Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[4] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[5]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] 5 U.S.C. § 8107(a).

[5] *James Kennedy, Jr.*, 40 ECAB 620 (1989); *Charles Dionne*, 38 ECAB 306 (1986).

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member of function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."[6] This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[7]

In a report dated April 30, 1997, Dr. Gragnani provided a history of appellant's condition and findings on examination and indicated that he had reviewed x-rays, including a July 13, 1995 x-ray, and magnetic resonance imaging scans. He provided an estimate of impairment citing to the applicable tables of the A.M.A., *Guides.*

In a report dated May 12, 1997, the district medical director stated that Dr. Gragnani had correctly applied the A.M.A., *Guides* to his findings on examination in reaching his opinion that appellant had a 1.2 percent permanent impairment, rounded[8] to 1 percent, of the right lower extremity.

The opinions of Drs. Weise and Nester are of limited probative value in that they failed to provide an assessment of appellant's permanent impairment in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.[9]

In a report dated August 1, 1995, Dr. Weise related that appellant underwent arthroscopy of the right knee with chondroplasty of the patella and noted that the medial meniscus was intact. His preoperative diagnosis was "medial meniscus tear right knee" but his postoperative diagnosis was "articular cartilage fracture of medial femoral condyle right knee chondromalacia patella." However, in a report dated August 22, 1996, Dr. Weise stated that appellant had undergone a partial meniscectomy and had a five percent permanent impairment of the lower extremity as a result of a meniscus tear and subsequent partial medial meniscectomy. As Dr. Weise was the physician who performed the surgery on appellant's knee and stated in his August 1, 1995 operative report that the medical meniscus was intact and that he performed a repair of an articular cartilage fracture, not a partial meniscectomy, his opinion expressed in his August 22, 1996 report as to permanent impairment is not correctly based upon the facts concerning

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[6] Federal (FECA) Procedure Manual, Part -- 2 Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); *see John H. Smith*, 41 ECAB 444, 448 (1990).

[7] *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

[8] The A.M.A., *Guides*, 4th edition at page 9 provides for the rounding of final (total) impairment percentages "to the nearer of the two nearest values ending in [zero] or [five]."

[9] *See James Kennedy, Jr.*, *supra* note 5 (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

appellant's condition, in that no partial meniscectomy was performed, and cannot be used to determine the degree of permanent impairment.

In a report dated October 9, 1997, Dr. Nester stated his opinion that appellant had a five percent permanent impairment of the whole person for an intracondylar undisplaced fracture based upon Table 64 at page 85 of the A.M.A., *Guides*. However, a schedule award is not payable under section 8107 of the Act for an impairment of the whole person.[10] As the district medical director noted, Dr. Nester also misinterpreted Dr. Weise's operative report by suggesting that Dr. Weise found an intracondylar fracture when the operative report indicates that Dr. Weise found a fraying of the cartilage surface. Therefore, this report cannot be used to determine appellant's degree of permanent impairment.

As the report of Dr. Gragnani provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[11]

The decisions of the Office of Workers' Compensation Programs dated October 23, August 4 and May 30, 1997 are affirmed.

Dated, Washington, D.C.
December 8, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] *See Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

[11] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).