

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENNIE J. MARTIN and GOVERNMENT PRINTING OFFICE,
Washington, D.C.

*Docket No. 96-2008; Submitted on the Record;
Issued March 4, 1999*

DECISION and ORDER

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

The issue is whether appellant has greater than an 18 percent permanent impairment of the right lower extremity, for which she received a schedule award.

The Board has duly reviewed the record on appeal and finds that the medical evidence fails to establish that appellant has more than an 18 percent permanent impairment of the right lower extremity.

Section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations² authorize the payment of schedule awards for the loss or permanent impairment of specified members, functions or organs of the body; however, neither the Act nor the regulations specify how the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the standard for determining the percentage of impairment, and the Board has concurred in such adoption.³

Appellant's attending physician, Dr. Rajendra P. Tripathi, reported that appellant had an impairment rating of 40 percent based on a retained active flexion of 112 degrees and a medial and lateral meniscectomy. In addition, he reported, appellant had an estimated 5 percent impairment secondary to weakness, atrophy, pain and discomfort.

Dr. Tripathi did not explain how he derived his estimate from the fourth edition of the A.M.A., *Guides*. Table 41, page 78, of the fourth edition of the A.M.A., *Guides* shows that a flexion of 112 degrees represents no impairment of the knee. Diagnosis-based estimates for certain lower extremity impairments, such as meniscectomy, are found in Table 64, page 85, but

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ See, e.g., *Leisa D. Vassar*, 40 ECAB 1287 (1989).

the A.M.A., *Guides* states that the physician should not use both diagnostic and examination criteria to describe the impairment of an anatomic part.⁴ Further, Dr. Tripathi did not show how he graded appellant's weakness, atrophy, pain and discomfort or what procedures he followed to estimate a 5 percent impairment for such. For these reason, his recommended rating of 40 percent is of diminished probative value in establishing whether appellant has more than the 18 percent impairment for which she has received compensation.⁵

An Office medical adviser reviewed the medical evidence and a statement of accepted facts and determined that appellant had a 14 percent permanent impairment of the right lower extremity. This was derived from Table 64, page 85, which shows that a total meniscectomy, medial or lateral, represents a 7 percent impairment of the lower extremity, while a partial meniscectomy represents a 2 percent impairment. Appellant had both and thus the diagnosis based estimate is 9 percent. The Office medical adviser added 5 percent for pain and weakness. The resulting estimate of 14 percent fails to support that appellant has more than an 18 percent permanent impairment of the right lower extremity, for which she has received a schedule award.

The March 26, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
March 4, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ A.M.A., *Guides* 84 (4th ed. 1993).

⁵ See *Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Raymond Montanez*, 31 ECAB 1475 (1980).