U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD D. HORSLEY and U.S. POSTAL SERVICE,
POST OFFICE, Susanville, Calif.

Docket No. 97-2161; Submitted on the Record;
Issued May 13, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained more than a four percent impairment of the left lower extremity for which he received a schedule award.

On November 30, 1995 appellant, then a 51-year-old postmaster, filed a notice of traumatic injury and claim for compensation alleging that on November 28, 1995 he injured his left knee while trying to move a canceling machine at work. The claim was accepted for a menicus tear. Appellant underwent an arthroscopic meniscectomy with resection of a chondral flap tear performed by Dr. Stephen D. Dow, a Board-certified orthopedic surgeon, on February 27, 1996. Appellant was off work during the periods of December 1 to December 5, 1995 and February 27 to March 14, 1996.

By letter dated September 25, 1996, the Office of Workers' Compensation Programs requested that Dr. Dow determine the extent of appellant's permanent impairment of the left knee based on the fourth edition of the American Medical Association, (A.M.A., *Guides*) *Guides to the Evaluation of Permanent Impairment*.

In a report dated October 18, 1996, Dr. Dow noted appellant's complaint of moderate aching knee discomfort. The doctor indicated that appellant had full flexion, full extension and no additional impairment due to weakness, atrophy or pain. He recommended that appellant avoid heavy lifting, running, jumping, climbing, kneeling, crouching and stair climbing. According to Dr. Dow, appellant has an impairment rating of approximately five to ten percent. The date of maximum medical improvement was listed as uncertain.

The Office referred appellant, along with the medical records and a statement of accepted facts, to Dr. John L. Branscum, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a September 30, 1996 report, the doctor recorded appellant's history of injury on November 28, 1995, along with appellant's complaints of lumbar back pain and knee pain with activities such as walking, pivoting and negotiating stairs. Physical findings revealed full range

of motion of the left knee, no ligament instability, no atrophy or weakness. Dr. Branscum further observed that appellant walked with a "Grade ½ - 1 limp" on the left side because he was unable to bend his knee when walking. The doctor's diagnoses included post arthroscopic surgery for a tear of the medial meniscus, probable early degenerative arthritis of the knee based on the fact that appellant still had pain, and degenerative disc disease with a superimposed sprain from the way appellant has to walk. He indicated that appellant's lumbar condition was related to his knee injury, noting that "when appellant's knee gets better so that he does not have to limp, the lumbar spine will spontaneously clear." Dr. Branscum concluded that appellant's lumbar spine condition was a temporary aggravation of a preexisting condition.

In a memorandum dated November 18, 1996, an Office medical examiner reviewed the Office's statement of accepted facts and a copy the medical record, focusing on Dr. Branscum's report. He noted appellant's subjective complaints of slight pain with walking, pivoting and negotiating stairs and severe pain with running, jumping or repetitive squatting. He stated:

> "This reviewer would recommend grading these pain complaints a maximal grade three as per the Grading Scheme, *i.e.*, pain that may interfere with activity, or 60 percent grade of sensory branches (femoral nerve - seven percent maximal for dysesthesia), equivalent to 4.2, rounded off to four percent impariment. Full range of motion would be equivalent to a zero percent impairment as per Table 41, Chapter three, fourth edition of the *Guides*. No atrophy or weakness would be equivalent to a zero percent impairment. Utilizing the Combined Evaluation Chart, the four, combined with zero, combined with zero, would be equivalent to a four percent impairment."

The Office medical examiner further noted that a second method of calculating an award would be based on "Diagnosis-Based Estimates, utilizing Table 64, which would assign a two percent impairment for partial medial meniscectomy." He recommended, however, that the Office adopt the higher award of a four percent impairment of the left lower extremity, with the date of maximal medical improvement corresponding to Dr. Branscum's September 30, 1996 examination.

In a decision dated December 10, 1996, the Office awarded appellant a schedule award for four percent permanent impairment to the left lower extremity for the period of September 30 to December 19, 1996.

By letter postmarked April 10, 1997, appellant requested a hearing.

In a May 23, 1997 decision, the Office denied appellant's hearing request as untimely filed, and advised that appellant could submit additional evidence through the reconsideration process.

The Board finds that this case is not in posture for a decision.[1]

[1] Appellant submitted medical records after the issuance of the Office's final decision. The Board has no jurisdiction to review these documents for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

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.[2] 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 Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.[3]

In order to meet his burden, appellant must submit sufficient medical evidence to show a permanent impairment causally related to his employment that is ratable under the A.M.A., *Guides*. The Office's procedures discuss the type of evidence required to support a schedule award. The evidence must show that the impairment has reached a permanent and fixed state and indicate the date this occurred, describe the impairment in detail, and contain an evaluation of the impairment under the A.M.A., *Guides*.[4]

In the instant case, Dr. Dow, appellant's surgeon and postoperative attending physician, reported that appellant's left knee impairment was approximately five to ten percent, but the doctor failed to reference the appropriate tables and pages in the A.M.A., *Guides* to support his diagnosis and gave no explanation for the basis of his rating. It is well settled that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides,* the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides.* Board cases are clear that if an attending physician does not utilize the A.M.A., *Guides,* his opinion is of diminished probative value in establishing the degree of any permanent impairment.[5] For this reason, the Board finds that Dr. Dow's October 18, 1996 report, finding approximately five to ten percent impairment of the left lower extremity, is of diminished probative value.

In his September 30, 1996 report, Dr. Branscum, the Office's second opinion physician, did not rate appellant's impairment. The Office medical adviser reviewed Dr. Branscum's findings and recommended that appellant be assigned a four percent impairment. In reaching this calculation, the Office medical adviser first graded appellant's pain as "pain that may interfere with activity, or 60 percent sensory loss. He further found that appellant had a maximal femoral nerve loss for dysesthesia of seven percent. The Board notes that Table 68, page 89 of the A.M.A., *Guides* provides that the maximum femoral nerve loss for dysesthesia is seven percent, while Table 20 at page 151 provides for a classification system for determining impairment due to pain or sensory deficit from peripheral nerve disorders. The Office medical adviser did not specifically reference Table 20, but his finding of 60 percent impairment sensory

[2] 5 U.S.C. § 8107(a).

[3] *James Kennedy, Jr.*, 40 ECAB 620 (1989); *Quincy E. Malone*, 31 ECAB 846 (1980).

[4] *Id.*

[5] *See Lena P. Huntley*, 46 ECAB 643 (1995).

is consistent with Table 20. In accordance with the procedures section set forth on page 151, Table 20 of the A.M.A., *Guides*, the Office medical examiner multiplied the 7 percent femoral nerve loss by the 60 percent sensory or pain loss and correctly calculated a 4.2 percent impairment, rounded off to 4 percent impairment for the femoral nerve injury.

Although the Office medical adviser also calculated a diagnosis based impairment of two for a partial meniscectomy, utilizing Table 64 at page 84 of the A.M.A., *Guides*, he chose to evaluate appellant's impairment based solely on the dysesthesia from the femoral nerve injury, noting that the four percent impairment provided a higher award. The Board notes, however, that according to page 84 of the A.M.A., *Guides*, Table 64 (diagnosis based impairments) may be combined with impairment from a different organ system, such as a nerve impairment. Similarly, Table 68, page 89 provides that a peripheral nerve injury can be combined with other types of lower extremity impairments, except for muscle weakness and atrophy.[6]

Thus, because the Office medical examiner failed to explain why he did not combine the partial meniscectomy impairment with the peripheral nerve injury, the Board finds that the Office's decision awarding a four percent impairment requires clarification. The case is therefore remanded for further development and evaluation of appellant's permanent impairment under the A.M.A., *Guides*. Thereafter, the Office shall issue a *de novo* decision regarding appellant's entitlement to a schedule award.

The decision of the Office of Workers' Compensation Program dated May 23, 1997 is vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.
May 13, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[6] A.M.A., *Guides*, page 88.