

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERARD J. REILLY and DEPARTMENT OF THE NAVY,
NAVAL WEAPONS STATION EARLE, Colts Neck, NJ

*Docket No. 98-1278; Submitted on the Record;
Issued November 4, 1999*

DECISION and ORDER

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

The issue is whether appellant established more than a 19 percent permanent impairment of his left lower extremity for which he received a schedule award.

On March 29, 1995 appellant, then a 49-year-old heavy mobile equipment mechanic, filed a notice of traumatic injury alleging that he injured his left knee in the course of his federal employment. The Office of Workers' Compensation Programs accepted the claim for a left knee sprain, a tear of the medial meniscus, and a hamstring sprain. On June 7, 1995 appellant filed a notice of recurrence of disability alleging that he suffered a recurrence on May 30, 1995. On July 18, 1995 the Office authorized a magnetic resonance imaging scan on appellant's left knee. On August 23, 1995 the Office authorized arthroscopic surgery on appellant's left knee which was performed on September 27, 1995.

Appellant's representative subsequently submitted a report from Dr. David Weiss, an osteopath. On October 2, 1996 he reviewed the history of the injury and the treatment appellant received. He noted that appellant suffered ongoing left knee pain and stiffness. On examination Dr. Weiss noted that appellant ambulated with a left lower extremity limp. He noted well-healed portal arthroscopy scars on appellant's left knee. Dr. Weiss noted that marked joint effusion and patellar ballottment remained present. He found tenderness over the medial joint space and medial midline. Dr. Weiss indicated that range of motion revealed "flexion extension 0 to 140/140 degrees." He found no evidence of instability of the anterior cruciate ligament and that patellar tracking revealed normal glide and tilt. Dr. Weiss stated that valgus stress testing revealed pain involving the medial midline and that lateral valgus testing was negative. He found atrophy in the vastus medialis oblique musculature. The appley grinding test was negative. Dr. Weiss noted a two and one-half circumference deficit on the left lower thigh. He also found that there was marked quadriceps atrophy. In this regard, he stated that quadriceps musculature was "3+/5 on the left." Dr. Weiss indicated that there was a two centimeter deficit of the left gastrocnemius or calf muscle. He stated that there was a mild gastrocnemius musculature weakness "noted at 4+/5." Dr. Weiss diagnosed post-traumatic internal

derangement of the left knee, status post tear of the medial meniscus, chondromalacia involving the left medial femoral condyle, post-traumatic attenuated anterior cruciate ligament of the left knee, post-traumatic osteoarthritis of the left knee joint, status postoperative arthroscopy of the left knee with partial medial meniscectomy and status postchondroplasty of the medial femoral condyle.

Dr. Weiss determined that appellant had a 26 percent permanent impairment of the left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). He found that appellant's left partial meniscectomy constituted a 2 percent impairment pursuant to Table 64, page 85, of the A.M.A., *Guides*. Dr. Weiss further found that appellant's moderate quadriceps atrophy on the left constituted a 13 percent permanent impairment pursuant to Table 37, page 77. He then found that appellant's moderate gastrocnemius muscle atrophy on the left constituted a 13 percent permanent impairment pursuant to the Table 39, page 77, of the A.M.A., *Guides*.¹ Dr. Weiss then utilized the Combined Value Chart on page 322 of the A.M.A., *Guides* to determine that appellant had a 26 percent impairment of the left lower extremity.

On November 13, 1996 Dr. Richard J. Scott, appellant's treating physician and a Board-certified orthopedic surgeon, indicated that he agreed with Dr. Weiss' finding that appellant had a 26 percent permanent impairment of the left lower extremity.

On January 28, 1997 appellant requested a schedule award.

On March 28, 1997 the Office medical adviser opined that appellant had a two percent impairment of the left lower extremity pursuant to Table 64, page 85, of the A.M.A., *Guides* which provides a two percent rating for a medial meniscectomy. The medical adviser noted that FECA Bulletin No. 95-17 precluded the use of Tables 36 to 39, pages 76 to 77, with Table 64 of the A.M.A., *Guides*. The medical adviser indicated that maximum medical improvement occurred on September 26, 1996, the date of Dr. Weiss' examination.

By decision dated April 3, 1997, the Office granted appellant a schedule award for a two percent permanent impairment of the left lower extremity.

On April 14, 1997 appellant's representative requested a hearing.

By decision dated October 27, 1997, the Office hearing representative determined that the Office and its medical adviser erred in failing to calculate the impairments appellant demonstrated pursuant to Table 37, Table 39 and Table 64 of the A.M.A., *Guides* and in then awarding appellant the highest percentage of impairment he could demonstrate in any one of the appropriate tables.² Consequently, the hearing representative remanded the case to the Office to

¹ Although Dr. Weiss indicated that he utilized Table 39, page 77, of the A.M.A., *Guides* to find that appellant's left gastrocnemius or calf muscle atrophy constituted a 13 percent impairment, it is apparent that he utilized Table 37, page 77, in reaching his determination.

² FECA Bulletin No. 96-17 (September 20, 1996).

obtain a supplemental report from the Office medical adviser.³ Following the development of the evidence, the Office hearing representative requested that the Office issue a *de novo* decision addressing appellant's schedule award.

On December 5, 1997 the Office medical adviser applied Dr. Weiss' findings to Table 37, page 77, of the A.M.A., *Guides*. He noted that appellant's thigh atrophy in his quadriceps of 2½ centimeters resulted in an 11 percent impairment of the left lower extremity. The medical adviser further noted that appellant's calf atrophy in his gastrocnemius of 2 centimeters resulted in an 8 percent impairment. The Office medical adviser combined these values to determine that appellant had a 10 percent permanent impairment of the left lower extremity pursuant to Table 37.

By decision dated December 17, 1997, the Office found that appellant had a 19 percent permanent impairment of the left lower extremity. Because appellant had previously been awarded a schedule award for 2 percent, the Office found that appellant was entitled to an additional schedule award for a 17 percent permanent impairment of the left lower extremity.

The Board finds that appellant has no more than a 19 percent permanent impairment of the left lower extremity for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulations,⁵ set forth that schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment is to 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 determining the percentage of impairment.⁶

In obtaining medical evidence for schedule award purposes, the Office must obtain an evaluation by an attending physician which includes a detailed description of the impairment including, where applicable, the loss in degrees of motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment. The 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 resulting restrictions and limitations.⁷ If the attending physician has provided a detailed description of the impairment, but has not properly evaluated the impairment pursuant to the A.M.A., *Guides*, the Office may request that the Office medical adviser review the case record

³ The hearing representative noted that, pursuant to FECA Bulletin No. 95-17, impairments derived from Table 37, Table 39 and Table 64 could not be combined.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.304.

⁶ *Leisa D. Vassar*, 40 ECAB 1287 (1989).

⁷ *Joseph D. Lee*, 42 ECAB 172 (1990).

and determine the degree of appellant's impairment utilizing the description provided by the attending physician and the A.M.A., *Guides*.⁸

In this case, the Office requested that its medical adviser apply the A.M.A., *Guides* to the measurements of impairment provided by Dr. Weiss. He provided measurements of impairment applicable to both Table 37, page 77, and Table 64, page 85, of the A.M.A., *Guides*. Dr. Weiss, however, mistakenly combined the impairments he found in Table 37 and Table 64 to determine that appellant had a 26 percent permanent impairment of the left lower extremity.⁹ In his March 28, 1997 report, the Office medical adviser properly determined that pursuant to Table 64, page 85, of the A.M.A., *Guides* appellant established a two percent permanent impairment because he underwent a partial medial menisectomy. In his December 5, 1997 report, the Office medical adviser applied the leg atrophy findings of Dr. Weiss' to determine appellant's percentage of impairment pursuant to Table 37, page 77, of the A.M.A., *Guides*. The medical adviser properly found that appellant's 2½ centimeter loss in the circumference of his left thigh constituted an 11 percent impairment pursuant to Table 37, page 77, of the A.M.A., *Guides* and that his 2 centimeter loss in the circumference of his left calf constituted an 8 percent impairment pursuant to Table 37, page 77, of the A.M.A., *Guides*. He then properly combined the leg atrophy impairments to find that appellant had a 19 percent permanent impairment of his left lower extremity. Because appellant's lower extremity impairment could be calculated pursuant to either Table 37 or Table 64 of the A.M.A., *Guides*, the Office properly selected the method rendering the highest percentage of impairment and granted appellant a schedule award based on a permanent impairment of the left lower extremity of 19 percent.¹⁰

⁸ *Paul R. Evans*, 44 ECAB 646 (1993).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exh. 4 at 4 (October 1995).

¹⁰ FECA Bulletin No. 96-17 (September 20, 1996).

The decision of the Office of Workers' Compensation Programs dated December 17, 1997 is affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member