

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD CANNARELLA and DEPARTMENT OF THE NAVY,  
NAVAL SEA SYSTEMS COMMAND, Great Neck, NY

*Docket No. 98-501; Submitted on the Record;  
Issued October 21, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established greater than a 37 percent permanent impairment of his left lower extremity for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied merit review of appellant's request for reconsideration pursuant to section 8128 of the Federal Employees' Compensation Act.

On April 3, 1995 appellant, a 49-year-old electronics engineer, filed a notice of traumatic injury and claim, alleging that he sustained an injury to his right shoulder, right and left knees and the right side of his jaw on March 30, 1995. By decision dated June 2, 1995, the Office accepted appellant's claim for injury to tooth No. 30, nonvital pulp, contusion of both knees and contusions of the right shoulder, back and chest. Subsequently, the Office accepted appellant's claim for bilateral knee tears and a right shoulder tear. On August 14, 1995 appellant filed a claim for a schedule award. In a decision dated January 23, 1996, the Office granted appellant a schedule award for a 16 percent permanent impairment of the right arm for a total of 49.92 weeks compensation for the period of October 1, 1995 to September 14, 1996. In a letter decision dated April 3, 1996, the Office denied appellant's request for epidural block medical treatment on the grounds that this treatment was not warranted or appropriate for the accepted conditions. By decision dated September 19, 1996, the Office granted appellant a schedule award for a 10 percent permanent impairment of the right lower extremity and a 10 percent permanent impairment of the left lower extremity. This resulted in 28.8 weeks of compensation for each lower extremity for a total of 57.6 weeks of compensation for the period September 15, 1996 to October 3, 1997. By decision dated September 16, 1996 and finalized September 20, 1996, an Office hearing representative affirmed the Office's decisions dated January 23 and September 19, 1996. In a decision dated May 2, 1997, the Office reviewed the file under section 8128 of the Act and vacated the decision dated September 19, 1996 with respect to the schedule award to the left lower extremity and increased his schedule award to the left lower extremity. The Office determined that appellant had established a 37 percent total permanent impairment of the left lower extremity and extended his schedule award to a total of 77.6 weeks of

compensation with a new expiration date of April 20, 1999. By decision dated September 8, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant merit review.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established greater than a 37 percent permanent impairment of his left lower extremity, for which he received a schedule award.<sup>1</sup>

Section 8107 of the Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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* (4<sup>th</sup> ed. 1993) have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.<sup>4</sup>

In the present case, the Office initially awarded appellant a schedule award for a 10 percent permanent impairment of the left lower extremity. Appellant requested reconsideration of this determination and submitted a medical report by Dr. Peter Langan, a Board-certified orthopedic surgeon. In a report dated December 3, 1996, Dr. Langan diagnosed a tear of the cruciate ligament of the left knee as well as significant menisci damage and severe cruciate ligament loss, resulting in a 37 percent permanent impairment according to Table 64 of the A.M.A., *Guides*. He added this impairment rating to the previous rating which was based on a loss of motion under Table 41 of the A.M.A., *Guides* and found a total permanent impairment of 47 percent. Dr. Langan also found a 22 percent permanent impairment of the right knee under Table 64 based on a tear of the meniscus which was severe and recommended surgery for the same.<sup>5</sup>

Pursuant to appellant's request for reconsideration, the Office reopened the record and found that appellant had sustained a 37 percent permanent impairment of the left lower extremity in accordance with Table 64 of the A.M.A., *Guides*, based on the December 3, 1996 report of Dr. Langan. The district medical adviser noted that the additional 37 percent impairment to the

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<sup>1</sup> 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 November 24, 1997, the only decisions before the Board are the Office's May 2 and September 8, 1997 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> 5 U.S.C. § 8107(c).

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> *Quincy E. Malone*, 31 ECAB 846 (1980).

<sup>5</sup> Dr. Langan also provided findings for the right shoulder. However, these impairment ratings were previously reviewed by the district medical adviser in rendering the schedule award decision dated January 23, 1996.

left lower extremity could not be added to the prior 10 percent impairment rating because to do so would violate FECA Bulletin 96-17 which precluded the use of Tables 40 to 60 of the A.M.A., *Guides* in conjunction with Table 64. He found that Dr. Langan's report supported a finding of a severe cruciate and collateral ligament laxity and therefore appellant had a 37 percent permanent impairment of the left lower extremity. The district medical adviser also found that appellant's impairment rating to the right lower extremity was unchanged since the ratings provided by Dr. Langan was in relation to a meniscectomy to the right knee which had not been performed.

As the district medical adviser noted, FECA Bulletin 96-17, which was issued September 20, 1996, provides guidelines for impairment/schedule awards computed under the fourth edition of the A.M.A., *Guides*.<sup>6</sup> The Office determined that certain tables should not be used together because to do so would inflate the percentages of the impairment. This determination is also set forth in the Office procedure manual under Part 3, Chapter 3.700 which provides that Table 64 is incompatible with Tables 40 to 60 in the 4<sup>th</sup> edition of the A.M.A., *Guides*.<sup>7</sup> Thus, the district medical adviser properly determined that appellant's schedule award for the left lower extremity should be increased to 37 percent based on Table 64 of the A.M.A., *Guides* but that this increased rating could not be combined with the prior 10 percent permanent impairment rating which was based on Table 41 of the A.M.A., *Guides*. Moreover, he also properly determined that appellant's impairment rating for the right lower extremity was unchanged inasmuch as Dr. Langan's conclusion of a 22 percent impairment was based on Table 64 of the A.M.A., *Guides* which provided such a rating in connection with a total meniscectomy and appellant had not undergone such surgery.

The Board also finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>8</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute

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<sup>6</sup> It is noted that FECA Bulletin 96-17 expired September 20, 1997, and this case was reopened during the period the standard set forth in the bulletin was applicable.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (October 1995).

<sup>8</sup> 20 C.F.R. § 10.138(b)(2).

a basis for reopening a case.<sup>9</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup>

With his request for reconsideration, appellant submitted a magnetic resonance imaging (MRI) scan of the right knee which revealed joint effusion and a tear of the posterior horn lateral meniscus, resubmitted the December 3, 1996 report by Dr. Langan, resubmitted Dr. Langan's initial impairment rating assessment dated January 5, 1996 of his right shoulder, and submitted a work restriction form dated March 17, 1997. The reports by Dr. Langan have been previously considered by the Office and cannot provide a basis for reopening the record as they are cumulative. The MRI scan and work restriction form are irrelevant to appellant's burden on reconsideration as these reports do not provide an impairment rating in accordance with the A.M.A., *Guides*. Therefore, appellant has not provided any evidence that would warrant reopening the record and the Office properly denied his request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated September 8 and May 2, 1997 are hereby affirmed.

Dated, Washington, D.C.  
October 21, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>9</sup> *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

<sup>10</sup> *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).