

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. COOPER, JR. and DEPARTMENT OF VETERANS AFFAIRS,
JAMES A. HALEY VETERANS ADMINISTRATION HOSPITAL, Tampa, FL

*Docket No. 98-746; Submitted on the Record;
Issued January 5, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

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

The Board has duly reviewed the case on appeal and finds it is not in posture for decision.

Appellant, a psychiatric nursing assistant, filed a claim alleging that on March 21, 1993 he injured his left knee in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for strain left knee and aggravation of chondromalacia. Appellant requested a schedule award on December 28, 1995. By decision dated September 30, 1996, the Office granted appellant a schedule award for five percent permanent impairment of his left lower extremity. Appellant requested an oral hearing and by decision dated April 15, 1997, the hearing representative remanded the case for additional medical evidence expressed in terms of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹ By decision dated July 25, 1997, the Office granted appellant a schedule award for five percent permanent impairment of his left lower extremity. Appellant requested reconsideration on October 26, 1997 and by decision dated November 17, 1997, the Office denied modification of its July 25, 1997 decision.

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations

¹ A.M.A., *Guides* (4th ed. 1993).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁴

In this case, the medical evidence indicates that appellant underwent a partial meniscectomy on his left knee prior to his employment injury. Following the accepted employment injury, the Office authorized additional surgery including arthroscopy on May 13, 1993 and proximal tibial osteotomy on June 15, 1994. The A.M.A., *Guides* provide for either a diagnostic or physical findings evaluation. In accordance with the A.M.A., *Guides*, appellant's surgeries would constitute 2 percent permanent impairment due to the partial meniscectomy and 25 percent permanent impairment due to the proximal tibial osteotomy.⁵

Appellant's attending physician, Dr. Kenneth A. Gustke, a Board-certified orthopedic surgeon, submitted a report dated July 28, 1997 indicating that appellant had 120 degrees of flexion⁶ that he had 1 centimeter of quadriceps atrophy on the left⁷ and that appellant demonstrated 8 degrees of valgus alignment on the left. He further indicated that appellant's "skyline" x-rays demonstrated two millimeters of joint space.⁸

In granting appellant a schedule award for five percent permanent impairment of his left lower extremity, the Office relied on the May 15, 1997 report from Dr. Frank K. Kriz, Jr., a second opinion physician and Board-certified orthopedic surgeon, who noted that appellant had flexion of the left of 135 degrees. He stated that the A.M.A., *Guides* indicated range of motion in 10 percent increments. The Board notes that the A.M.A., *Guides*, 4th edition does not specifically indicate knee impairment for flexion of more than 110 degrees. It appears that Dr. Kriz did not properly apply the A.M.A., *Guides* in reaching his impairment rating. Furthermore, Dr. Kriz did not provide any explanation for choosing the physical findings method of evaluation. This is necessary as the diagnostic rating method would have provided appellant with a much greater impairment rating. The A.M.A., *Guides* recommend choosing the method which would provide the greater impairment estimate.⁹

As there is no evidence that appellant's impairment rating for schedule award purposes was based on the proper edition of the A.M.A., *Guides*, the Board finds that the case is not in posture for decision. On remand, the Office should refer appellant, a statement of accepted facts, including all relevant medical history and a request for a detailed impairment rating in

⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ A.M.A., *Guides*, 85, Table 64.

⁶ The A.M.A., *Guides* provide in Table 41, page 78, that knee flexion of 110 degrees is a 10 percent impairment.

⁷ A.M.A., *Guides*, 77, Table 37 indicates that this is a three to eight percent impairment of the lower extremity.

⁸ The A.M.A., *Guides* provide that 2 millimeters of cartilage on the knee is a 20 percent impairment of the lower extremity at page 83, Table 62.

⁹ A.M.A., *Guides*, 84.

accordance with the 4th edition of the A.M.A., *Guides*, to an appropriate physician. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated November 17 and July 25, 1997 are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
January 5, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member