

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER L. WEAVER and DEPARTMENT OF THE ARMY,
AMSEL-PT CPAC2, Fort Monmouth, NJ

*Docket No. 98-788; Submitted on the Record;
Issued January 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has greater than a 10 percent impairment of the right lower extremity and greater than a 2 percent impairment of the left lower extremity, for which he has received schedule awards.

Appellant, then a 55-year-old commissary manager, filed a claim on December 6, 1993 for an injury he sustained to his neck, head, back, shoulders and knees on December 1, 1993 when he hit his head on a support ceiling beam after bending down to pick up some papers he had dropped. The Office of Workers' Compensation Programs accepted the claim for contusion of the head, concussion, contusion of the right knee, cervical sprain and tear at the right knee. The Office later authorized arthroscopic surgery of the left knee with partial medial and lateral meniscectomy.

On June 12, 1996 appellant filed a claim for a schedule award. Appellant's counsel submitted an April 15, 1995 report from Dr. David Weiss, appellant's treating physician and an osteopath, in support of his claim. In his report, Dr. Weiss demonstrated a familiarity with appellant's medical history and report findings. Upon examination he noted:

“Examination of the bilateral knees reveals patellar crepitation, right greater than left, with crepitation right greater than left. Patellar glide is negative. There is medial joint space tenderness on the right and lateral joint space tenderness bilaterally. There is medial mid line tenderness on the right. There is effusion and boggiess noted, right greater than left. There is instability on the right. Drawer sign is negative. There is medial femoral condyle tenderness noted on the right. Quadriceps atrophy is negative. Apprehension is negative. Muscle strength testing reveals a grade of 4/5 on the right and 4+/5 on the left involving the quadriceps muscles. Valgus stress test is positive on the right varus stress test is positive bilaterally. The patient cannot perform squatting. Range of motion reveals flexion extension on the right of 130/140 degrees, left 140.140 degrees.

Measurement of the quadriceps muscle reveals 29½ cm on the right versus 28½ cm on the left.”

Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr. Weiss determined that appellant had a 22 percent impairment of the right knee based upon a 10 percent impairment for partial medial and lateral meniscectomy and 12 percent impairment for quadriceps muscle weakness on the right. He also determined that appellant had a 14 percent impairment of the left knee, based upon a 2 percent impairment for partial lateral meniscectomy and 12 percent impairment for quadriceps muscle weakness.

On January 16, 1997 the Office medical adviser stated that appellant had a 10 percent impairment of the right lower extremity and a 2 percent impairment of the left lower extremity. The Office adviser agreed with Dr. Weiss’ determination that appellant had a 10 percent impairment in his right lower extremity due to the partial lateral and medial meniscectomy and that appellant had a 2 percent impairment in his left lower extremity due to the partial lateral meniscectomy. However, the Office medical adviser discounted his calculations, based upon appellant’s loss of muscle strength in his left and right quadriceps noting that the Federal Employees’ Compensation Act Bulletin No. 95-17 “precludes the use of Tables 38 & 39 (muscle weakness) in conjunction with Table 64 [meniscal surgery].”

In a decision dated January 28, 1997, the Office issued a schedule award for a 10 percent permanent impairment of the right leg and a 2 percent impairment of the left leg. On February 4, 1997 appellant’s counsel requested an oral hearing.

On July 29, 1997 an oral hearing was held in Philadelphia, PA and a decision was issued and finalized on October 10, 1997. In that decision, the hearing representative determined that the Office medical adviser properly relied on the A.M.A., *Guides* to determine that appellant had a 10 percent impairment of his right leg and a 2 percent impairment of his left leg and affirmed the January 28, 1997 decision.

The Board finds that appellant has not sustained more than a 10 percent impairment of his right leg and a 2 percent impairment of his left leg, for which he received a schedule award.

The schedule award provision of the Act¹ and its implementing regulation² 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

all claimants. The Office has adopted the A.M.A., *Guides*,³ and the Board has concurred in such adoption as an appropriate standard for evaluating schedule losses.⁴

In this case, the Office, in FECA Bulletin No. 95-17⁵ stated that certain tables in Chapter 3 of the A.M.A., *Guides* are not to be used with other tables in that chapter because to do so would result in “overlapping applications, leading to percentages which greatly overstated the impairment.” Specifically, the Office noted that Table 39, impairments from lower extremity muscle weakness, is not to be used with Table 64, arthritis impairments based on reontgenographically determined cartilage intervals. Since Dr. Weiss relied on both Table 39 and 64 in determining appellant’s schedule award, his determination has diminished probative value. However, the Office medical adviser properly applied the A.M.A., *Guides* by calculating appellant’s permanent partial impairment based on his partial and lateral meniscectomy in his right knee and his partial lateral meniscectomy in his left knee to arrive at a 10 percent permanent impairment of the right knee and a 2 percent impairment of the left knee.

The decision of the Office of Workers’ Compensation Programs dated October 10, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 28, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ A.M.A., *Guides* (4th ed. 1993).

⁴ *Kenneth E. Leone*, 46 ECAB 133 (1994).

⁵ See FECA Bulletin No. 95-17 (issued March 23, 1995); *William L. Simmons, Jr.*, (Docket No. 97-1240, issued February 4, 1999).