

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PABLO V. RODRIGUEZ and DEPARTMENT OF THE NAVY,
MARINE CORPS BASE, Camp Pendleton, CA

*Docket No. 98-1925; Submitted on the Record;
Issued July 18, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained greater than a 19 percent permanent impairment of the left leg and a 15 percent permanent impairment of the right leg, for which he received a schedule award.

The Board has duly reviewed the case record in the present appeal and finds that this case is not in posture for a decision.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.³

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.⁴ 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 Office of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the*

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

Evaluation of Permanent Impairment (hereinafter the A.M.A., *Guides*) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive 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."⁶ This 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 restrictions and limitations.⁷

On June 13, 1991 appellant, then a 59-year-old pipefitter, sustained a right knee strain, torn medial meniscus and left knee strain and derangement in the performance of duty. He underwent surgical procedures on August 26, 1991, September 8 and November 15, 1993. On January 6, 1994 appellant filed a claim for a schedule award. By decision dated March 20, 1998,⁸ the Office granted appellant a schedule award based upon a 19 percent permanent impairment of the left leg and a 15 percent permanent impairment of the right leg. Appellant was paid at the 75 percent pay rate due an employee with dependents.⁹

In a report dated May 3, 1994, Dr. Arthur J. Varley, appellant's attending Board-certified orthopedic surgeon, stated that appellant's condition was permanent and stationary.

In a report dated December 22, 1994, Dr. Denise D. Williamson, a specialist in orthopedic medicine and an associate of Dr. Varley,¹⁰ related that appellant had moderate to severe pain in his left knee when walking and moderate pain when standing; moderate pain in the right knee when walking, sitting or standing. She reported flexion in the left knee was decreased 10 degrees and that flexion in the right knee was decreased 5 degrees but extension

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); see *John H. Smith*, 41 ECAB 444, 448 (1990).

⁷ *Alvin C. Lewis*, 36 ECAB 595-96 (1985).

⁸ The Office reissued its October 5, 1995 schedule award decision in order to protect appellant's appeal rights following a February 19, 1998 Board order remanding the case because the record, before the Board at that time, was incomplete.

⁹ On appeal appellant questioned the 75 percent pay rate. The basic rate of compensation under the Act is 66 2/3 percent of the injured employee's monthly pay. 5 U.S.C. § 8105(a). When the employee has one or more dependents, as defined by the Act, he is entitled to have his compensation augmented at the rate of 8 1/3 percent of his monthly pay which equals a 75 percent pay rate rather than the basic 66 2/3 percent pay rate. 5 U.S.C. § 8110(b).

¹⁰ The record shows that appellant was treated by Dr. Williamson beginning in December 1994 following the death of Dr. Varley.

was normal in both knees. Dr. Williamson stated that appellant had quadriceps muscle weakness of 25 percent in both legs and a 10 percent weakness in the left calf muscle. She noted that appellant had undergone a partial meniscectomy on both knees.

In memoranda dated August 11 and June 1, 1995, Dr. Kevin Collinsworth, an Office medical consultant, stated that he had reviewed the report of Dr. Williamson and based his computation of appellant's permanent impairment on the findings in her report. He determined that appellant had a 19 percent permanent impairment of the left leg, which included a 9 percent impairment due to quadriceps atrophy, 6 percent for knee pain, 3 percent for calf weakness and 2 percent for a partial meniscectomy, according to Table 68 at page 89 of the fourth edition of the A.M.A., *Guides* (femoral nerve), Table 68 at page 89 and Table 20 at page 151 (Grade 4, lateral femoral cutaneous nerve), Table 39 at page 77 (knee),¹¹ and Table 64 at page 85, respectively.¹² Dr. Collinsworth determined that appellant had a 15 percent permanent impairment of the right leg which included a 9 percent impairment due to quadriceps atrophy, 4 percent for knee pain and 2 percent for a partial meniscectomy based upon Table 68 at page 89 (femoral nerve), Table 68 at page 89 and Table 20 at page 151 (Grade 3, lateral femoral cutaneous nerve) and Table 64 at page 85, respectively. He found no impairment due to range of motion utilizing Table 41 at page 78. However, the record shows that Dr. Collinsworth had requested that additional information be provided to him so that he could complete his computation of appellant's permanent impairment. He asked, "regarding the degenerative arthritis in the knees, what is the cartilage interval in millimeters based on knee x-rays, of each knee?"¹³ On remand, the Office should obtain the measurements requested by Dr. Collinsworth and then determine whether appellant is entitled to a corrected schedule award to include arthritis impairment.

¹¹ The tibial motor nerve is the nerve which supplies the knee joint and calf; see *Dorland's Illustrated Medical Dictionary*, (27th ed. 1988), Table of Nervi at page 1124

¹² The separate percentages are combined, rather than added, based on the Combined Values Chart at page 322 of the A.M.A., *Guides*.

¹³ Table 62 at page 83 of the A.M.A., *Guides* is used in computing arthritis impairments based on roentgenographically determined cartilage levels.

The decision of the Office of Workers' Compensation Programs dated March 20, 1998 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
July 18, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member