

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORMAN J. BECKMAN and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, St. Louis, MO

*Docket No. 99-912; Submitted on the Record;
Issued June 7, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant sustained no more than a two percent permanent impairment of his right lower extremity for which he received a schedule award.

On July 29, 1997 appellant, a refrigeration and air-conditioning mechanic, filed a notice of occupational disease and claim for compensation alleging that his work duties, which require physical maneuvering in awkward positions to perform repairs, caused him to suffer a torn left meniscus from extensive twisting and pressure.¹ Appellant stopped work on August 1, 1997 and received pay during sick leave usage from that date until September 3, 1997. Appellant returned to work for regular duty on September 4, 1997. The Office accepted his claim for right knee meniscus tear with surgery on March 23, 1998.²

On July 24, 1998 the Office requested that the district medical adviser review appellant's case file and compute the permanent impairment of appellant's disability secondary to his right lower extremity to determine his eligibility for a schedule award.

The Office received a letter from Dr. Richard Lehman, a Board-certified orthopedic surgeon, dated August 4, 1998, which indicated that, upon examination that day, appellant had full range of motion of his knee with pain over the medial joint line, which was minimal. He

¹ The Board notes that appellant filed a second CA-2 form on September 11, 1997, and clarified that he suffered from a torn right meniscus as a result of his employment and not a torn left meniscus as previously stated.

² The Office previously denied appellant's claim based upon insufficient evidence in a decision dated September 23, 1997, and appellant requested review of the written record on October 28, 1997. By decision dated December 17, 1997, a hearing representative affirmed the prior decision finding that the evidence remained deficient to establish appellant's claim. On March 7, 1998 appellant requested reconsideration. By decision dated March 23, 1998, the Office vacated the September 23, 1997 decision finding that the information submitted for reconsideration was sufficient to warrant modification of the prior decision.

noted that appellant had full extension and flexion. He further noted that appellant had excellent flexor strength. Dr. Lehman concluded that appellant had reached his maximum medical benefit and had a disability of seven percent at the level of the knee.

On September 21, 1998 the district medical adviser determined that Dr. Lehman's findings could not be applied to the standard set forth in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (A.M.A., *Guides*) to determine schedule awards, and advised that appellant's impairment rating be calculated by the regional office, upon examination by another physician who utilizes the A.M.A., *Guides*.

Dr. Donald McPhaul, a Board-certified specialist in physical medicine and rehabilitation, examined appellant and reported his medical, family and social history and his condition at the time of the examination, and further relayed the facts and circumstances surrounding appellant's right knee injury. Dr. McPhaul opined that the date of maximum medical improvement was September 15, 1997, and noted that appellant had three healed ports, one medial and two lateral to the knee; that he had some tenderness along the lateral aspect of the joint line, and that there was no crepitus with joint movement. Dr. McPhaul noted that according to Table 41, page 78 of the A.M.A., *Guides*, range of motion of the knee revealed that appellant had full 180 degree of extension; 133 degree of flexion; and 5 degree of valgus positioning at the knee. Dr. McPhaul further noted that, with respect to weakness and atrophy at Table 37, page 77, appellant had 5/5 strength in his right lower extremity and 0 percent impairment. Dr. McPhaul indicated that appellant had not reported pain and that there had been no vascular changes. Dr. McPhaul determined that combining impairments of zero percent due to abnormal range of motion, weakness, atrophy, pain and vascular changes yielded zero percent lower extremity impairment, and based upon Table 64, page 85 of the A.M.A., *Guides*, appellant's partial medial meniscectomy yielded a two percent lower extremity impairment.

In a letter dated November 6, 1998, the district medical adviser discussed his review of Dr. McPhaul's report and found that he properly determined, in accordance with the fourth edition of the A.M.A., *Guides*, that appellant had a two percent permanent impairment of his right lower extremity.

By an award of compensation dated December 21, 1998, the Office granted appellant a schedule award for 2 percent loss of use of his right lower extremity for 5.76 weeks at the weekly rate of \$490.13.

On appeal appellant argues that his schedule award is inadequate for compensation of his right knee injury. He contends that the Office has not considered the pain and discomfort that his knee injury will cause, especially in his profession, and that his injury is permanent and substantial.

The Board finds that the Office properly determined that appellant sustained no more than a two percent permanent impairment of his right lower extremity for which he received a schedule award.

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. rev., 1995).

The schedule award provisions of the Federal Employees' Compensation Act set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule.⁴ However, the Act does not specify the manner in which the percentage of loss of a member shall be determined. The Board has held, however, that 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 Office has adopted the A.M.A., *Guides* for determining the extent of permanent impairments and the Board has concurred with the adoption of the A.M.A., *Guides*.⁵ Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's physician. 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 resulting restrictions and limitations.⁶

In the instant case, appellant submitted operative reports and reports from his treating physician, Dr. Lehman, which provided detailed descriptions of appellant's injury and the right knee arthroscopy performed on August 1, 1997 to repair his meniscus tear. Dr. Lehman indicated in his August 4, 1998 letter appellant's range of motion, his extension and flexion at that time. Dr. Lehman opined, based upon his examination, that appellant had a disability of seven percent at the level of the knee, however, his opinion was not based upon the A.M.A., *Guides* as required by the Act to support a schedule award.

The district medical adviser, in his letter dated September 21, 1998, properly noted that a schedule award could not be determined based upon Dr. Lehman's report, and advised that appellant see a physician who would provide an impairment rating according to the A.M.A., *Guides*. As a result, the Office referred appellant to Dr. McPhaul and specifically requested that he submit a report containing a description of any permanent impairment resulting from the injury, expressed in terms of percentage of loss of use of the affected member or function according to the A.M.A., *Guides*.

Dr. McPhaul reported, in his letter dated October 19, 1998, appellant's past medical history, the circumstances surrounding the accepted right knee injury, and the date appellant reached maximum medical improvement; and further noted his findings on examination, which included a complete evaluation of appellant's range of motion, weakness and atrophy, pain and vascular changes. After a thorough examination, Dr. McPhaul opined that appellant had a two percent right lower extremity impairment due to his right knee injury, and indicated that he utilized the tables and figures of the A.M.A., *Guides* to reach his impairment rating. Dr. McPhaul properly used the diagnosis-based estimate found at Table 64, page 85 to conclude that appellant's partial medial meniscectomy resulted in a two percent right lower extremity impairment. The district medical adviser reviewed Dr. McPhaul's report, noted his use of the

⁴ 5 U.S.C. § 8107.

⁵ *Donald Mueller*, 32 ECAB 323 (1980); *Anne E. Hughes*, 27 ECAB 106 (1975); *Theodore P. Richardson*, 25 ECAB 113 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

⁶ *Alvin C. Lewis*, 36 ECAB 595 (1985).

A.M.A., *Guides*, and concurred with his opinion that appellant had an impairment rating of two percent loss of use of his lower right extremity.

The record reveals that appellant received a schedule award for two percent of his right lower extremity for 5.76 weeks at the rate of 66 2/3 percent of his monthly pay as defined under the Act.⁷ As the record is void of conflicting medical evidence that indicates any greater impairment of loss of function to appellant's right knee, the Office properly issued a schedule award in the amount of \$2,823.15 representing a total of 5.76 weeks of compensation.

The decision of the Office of Workers' Compensation Programs dated December 21, 1998 is affirmed.

Dated, Washington, D.C.
June 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁷ See 5 U.S.C. §§ 8105, 8106.