U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES C. CAMPBELL and DEPARTMENT OF JUSTICE, FEDERAL PRISON SYSTEMS, Springfield, MO

Docket No. 99-1266; Submitted on the Record; Issued June 22, 2000

DECISION and ORDER

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

The issue is whether appellant has more than a 14 percent permanent impairment of his right lower extremity for which he received a schedule award.

The Board had duly reviewed the case on appeal and finds that appellant has no more than a 14 percent permanent impairment of his right lower extremity for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act[1] 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 Evaluation of Permanent Impairment* (A.M.A., *Guides*, fourth edition 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.[5]

[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).

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

In this case, the Office accepted that as a result of incidents on March 21, 1988, January 6, 1989 and March 21, 1990 appellant, a correctional officer, sustained several employment-related injuries to his right knee, including contusions, strains, internal joint derangement with arthroscopy and partial medial meniscectomy, and patellofemoral dysfunction with arthroscopic surgery. By decision dated June 25, 1991, the Office awarded appellant a schedule award for a 14 percent permanent impairment of his right lower extremity. On September 25, 1995 appellant, then a 46-year-old correctional officer, filed an additional claim for traumatic injury alleging that on September 21, 1995 he sustained another right knee injury while subduing an inmate. The Office accepted appellant's claim for a right knee contusion and authorized diagnostic arthroscopy, which was performed on November 22, 1995.[6] On December 3, 1996 appellant filed a claim for an additional schedule award. After a period of medical and factual development, in a decision dated March 25, 1998, the Office denied appellant's claim for an additional schedule award. Appellant requested reconsideration of the Office's decision and submitted additional evidence and arguments in support of his request. In a decision dated January 20, 1999, the Office found the evidence and arguments failed to establish that appellant has greater than a 14 percent permanent impairment to his right lower extremity, and thus appellant is not entitled to an additional schedule award.

In support of his claim that he has more than a 14 percent permanent impairment of his right lower extremity, appellant submitted a progress note dated March 8, 1996 from Dr. James T. Shaeffer, a treating Board-certified orthopedic surgeon, who noted that appellant had come to his office for a final rating of his knee. He stated that appellant still had some swelling and soreness, and that there were still some things appellant could not do, and that, therefore, he was going to excuse appellant from kneeling for his cardiopulmonary resuscitation (CPR) classes and from his annual self-defense classes. Dr. Shaeffer concluded that he was "going to increase his rating to 25 [percent] permanent physical impairment loss and function on his right knee at the 160-week level." He did not reference the A.M.A., *Guides* in his report or otherwise explain how he arrived at the 25 percent rating.

On February 20, 1997 on the advice of the Office medical adviser, the Office arranged for appellant to be examined by Dr. Newt Wakeman, a Board-certified orthopedic surgeon and second opinion physician, who in a report dated March 6, 1997, noted that appellant had no crepitation with flexion or extension and no atrophy or weakness, but had persistent pain, anterior aspect right knee, post shaving of chondromalacia areas, Class I medial femoral condyle and medial aspect of the patellafemoral joint. Dr. Wakeman further noted that appellant had flexion to 140 degrees and no more than a 5 degree extension lag. He stated that, pursuant to the fourth edition of the A.M.A., *Guides*, appellant's condition equated to either a two percent lower extremity impairment for his partial medial meniscectomy, utilizing Table 64, or a four percent lower extremity impairment from pain and discomfort, Class III, under Tables 68 and Table 20,

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[6] Appellant's treating physician, Dr. James T. Shaeffer, listed appellant's postoperative diagnoses as chondromalacia of the medial femoral condyle and chondromalacia of the femoral side of the patellofemoral joint. In a follow-up report dated January 15, 1996, Dr. Shaeffer stated that the surgery was not related to appellant's prior knee conditions, but was necessitated by the new injury sustained by appellant on September 21, 1995.

page 151. Dr. Wakeman concluded that, therefore, appellant did not have an increased impairment rating over his prior rating of 14 percent.[7]

On January 20, 1998 Dr. Daniel D. Zimmerman, an Office medical adviser and Board-certified internist, reviewed the reports of Drs. Shaeffer and Wakeman.[8] The Office medical adviser noted that flexion to 140 degrees as measured by Dr. Wakeman would equate to a 0 percent impairment, but that an extension lag of 5 percent equated to a 10 percent permanent impairment. He further explained that, while appellant had no atrophy or decreased strength, and therefore had no ratable weakness, he did have persistent pain due to residuals of Grade I chondromalacia, as noted by both Dr. Wakeman and Dr. Shaeffer, and that Dr. Shaeffer had excused appellant from CPR and self-defense classes due to this pain. The Office medical adviser stated that, pursuant to Table 20, page 4/151, appellant's pain could be graded as 60 percent for pain which interferes with activity. Utilizing Table 68, page 3/89, the physician determined that the maximum allowable percentage for pain due to impairment of the femoral nerve was seven percent, which, when multiplied by 60 percent as outlined in the procedures at Table 20, page 4/151, resulted in a 4 percent impairment, rounded to the nearest percentage. Finally, using the Combined Values Chart at pages 322 to 324 of the A.M.A., *Guides,* 10 percent for decreased extension combined with 4 percent for pain yields a 14 percent permanent impairment of the right lower extremity, or no increase over that previously awarded.[9]

On reconsideration, appellant submitted a supplemental report from Dr. Shaeffer, dated January 4, 1999, in which the physician attempted to express his prior impairment rating in conformance with the A.M.A., *Guides*. Dr. Shaeffer stated that appellant "lacks 5 degrees of complete extension of his right knee and lacks 30 degrees of flexion of his right knee compared to the left knee," and concluded that, therefore, pursuant to the fourth edition of the A.M.A., *Guides*, his prior rating of 25 percent remained unchanged.

In a final report dated January 19, 1999, the Office medical adviser reviewed Dr. Shaeffer's supplementary report, noting that, while the physician stated that appellant lacked

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[7] Dr. Wakeman further noted that he had previously evaluated appellant on September 17, 1990 and March 26, 1991, using the third edition of the A.M.A., *Guides*, then in effect, and found appellant to have a 26 percent permanent impairment of his lower extremity. Dr. Wakeman stated that this prior rating included two percent for pain in the distribution of the saphenous branch of the femoral nerve, five percent for partial meniscectomy, ten percent for patella femoral arthritis and nine percent for loss of knee flexion and quadriceps weakness. He explained that these prior ratings differed substantially from the current ratings because the prior ratings were not subject to the FECA Bulletin 95-17. The FECA Bulletin 95-17, Impairment/Schedule Awards -- Alternatives in Calculation, issued March 23, 1995, discusses alternatives in calculation of an impairment for schedule award purposes. The FECA Bulletin 95-17 addresses impairments calculated using tables with overlapping applications, leading to impairment percentages which greatly overstate the actual degree of impairment.

[8] At the request of Dr. Zimmerman, the Office doubled appellant's current claim for an increased schedule award with his prior schedule award claims, in order that Dr. Zimmerman could review the complete medical file.

[9] The Office medical adviser further explained that the method of calculation of impairment used was the most advantageous to appellant, as utilization of the alternative diagnosis based method, outlined at Table 64, page 3/85, would result in a two percent impairment for partial meniscectomy combined with a five percent impairment for chondromalacia, pursuant to Table 62, page 3/83, for a total impairment rating of seven percent of the right lower extremity.

5 degrees of extension and 30 degrees of flexion when compared to the opposite side, he did not give the actual measured range of motion of the right knee, nor did he state that the opposite side, the left knee, had a normal range of motion. The Office medical adviser concluded that, assuming that appellant's left knee had a normal range of motion, a 30-degree loss of flexion in the right knee, or flexion to 120 degrees, would equate to a 0 percent impairment, and a 5 degree lack of extension would equate to a 10 percent impairment, for a total impairment rating of 10 percent of the right lower extremity, not the 25 percent impairment rating offered by Dr. Shaeffer.

The Board has held that, if an examining physician does not use the A.M.A., *Guides* to calculate the degree of permanent impairment, it is proper for an Office medical adviser to review the record and apply the A.M.A., *Guides* to the examination findings reported by the examining physician.[10] Dr. Shaeffer referred to the A.M.A., *Guides* in his most recent report dated January 4, 1999, but did not explain fully the calculations behind his conclusion that appellant had a 25 percent permanent impairment of the right lower extremity, with specific reference to the A.M.A., *Guides* for each calculation. In addition, while Dr. Wakeman referenced specific portions of the A.M.A., *Guides,* he did not apply the proper sections of the A.M.A., *Guides* to all of his findings on physical examination, and, therefore, did not provided a complete impairment rating utilizing the A.M.A., *Guides*. As the Office medical adviser properly applied the relevant portions of the A.M.A., *Guides* to the physical findings described in both Dr. Shaeffer's and Dr. Wakeman's reports, and provided full rationale for his conclusions, and as there is no rationalized medical evidence in the record supporting more than 14 percent permanent impairment of appellant's right lower extremity, the Board finds that appellant has no more than a 14 percent permanent impairment of his right lower extremity.

[10] *Lena P. Huntley*, 46 ECAB 643 (1995).

The decisions of the Office of Workers' Compensation Programs dated January 20, 1999 and March 25, 1998 are affirmed.

Dated, Washington, D.C.
June 22, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member