

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT A. TYNDELL and DEPARTMENT OF THE NAVY,
Norfolk, VA

*Docket No. 98-2224; Submitted on the Record;
Issued May 23, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has more than nine percent permanent impairment of his left lower extremity; (2) whether appellant has more than seven percent permanent impairment of his right lower extremity; and (3) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on June 16 and March 11, 1998.

The Board has duly reviewed the case on appeal and finds the case not in posture regarding the permanent impairment of appellant's left lower extremity.

Appellant, an engine equipment operator, filed a claim on August 8, 1991 alleging that he injured his left knee in the performance of duty. The Office accepted his claim for a sprain of the left knee on October 11, 1991. On December 16, 1994 the Office granted appellant a schedule award for two percent permanent impairment of his left lower extremity. Appellant filed a notice of recurrence of disability on June 5, 1996. The Office accepted that appellant sustained a recurrence of disability on June 5, 1996. On March 13, 1997 the Office accepted chondromalacia of the right patella. On November 6, 1997 the Office granted appellant a schedule award for seven percent impairment of the right lower extremity. On December 2, 1997 the Office granted appellant a schedule award for nine percent permanent impairment of the left lower extremity. Appellant requested reconsideration on December 15, 1997 alleging that he had 17 percent impairment of his right lower extremity. The Office declined to reopen appellant's claim for review of the merits on March 11, 1998. Appellant again requested reconsideration of his schedule award for his right leg on April 20, 1998. The Office declined to reopen appellant's claim for review of the merits on June 16, 1998.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of

¹ 5 U.S.C. § 8107.

specified body members, functions or organs. However, neither the Act nor the regulations 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴

Appellant's attending physician, Dr. Glenn Nichols, a Board-certified orthopedic surgeon, performed surgery on appellant's left knee on August 12, 1996. He provided diagnoses of torn medial meniscus, synovitis and chondromalacia patella left knee. Dr. Nichols performed an examination under anesthesia, arthroscopy, debridement of the medial meniscus and a partial synovectomy of appellant's left knee. He stated that the middle third of the meniscus showed a small split and that the posterior torn was absent due to its previous meniscectomy. Dr. Nichols concluded that there was no meniscus tear and the meniscus was stable when probed.

Appellant's attending physician completed a form report on April 16, 1997 and indicated that appellant's left knee retained flexion of 130 degrees and extension of 0 degrees. He found that appellant was entitled to five percent impairment secondary to chondromalacia of the patella for a total of seven percent permanent impairment.

The Office medical adviser reviewed the findings and found that appellant had two percent impairment for a partial medial meniscectomy and seven percent for four millimeters of chondromalacia of the patella. The A.M.A., *Guides* provide for two percent impairment of the lower extremity for a partial medial meniscectomy.⁵ Appellant received a schedule award for two percent impairment due to a partial medial meniscectomy in 1994. Therefore, he is not entitled to an additional schedule award for the same condition. As there is no evidence that appellant sustained an additional meniscus tear, he is not entitled to an additional two percent impairment for this condition.

Appellant's attending physician, Dr. Nichols, and the Office medical adviser both found that appellant had permanent impairment due to chondromalacia of the left knee in accordance with Table 62 of the A.M.A., *Guides*.⁶ He stated that this finding was made on arthroscopic examination. The Office medical adviser relied on Dr. Nichols finding and concluded that appellant had a four millimeter cartilage interval entitling him to a schedule award for seven percent permanent impairment. The Board has found that impairment due to arthritis based on Table 62 of the A.M.A., *Guides*,⁷ must be documented as supported by a "sunrise view" x-ray.⁸

² 20 C.F.R. § 10.304.

³ A.M.A., *Guides* (4th ed. 1993).

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

⁵ A.M.A., *Guides*, 85, Table 64.

⁶ A.M.A., *Guides*, 83.

⁷ *Id.*

As there is no evidence that either the Office medical adviser or Dr. Nichols relied on such an x-ray, the findings of these physicians are insufficient. The Board, therefore, finds that the case must be remanded to the Office for further development, a medical opinion that is consistent with the A.M.A., *Guides* and an appropriate decision.

The Board further finds that the case is not in posture in regard to the permanent impairment of appellant's right lower extremity.

Dr. Nichols performed surgery on appellant's right lower extremity on June 27, 1996. He performed examination under anesthesia, arthroscopy, debridement of the synovium, chondroplasty of the patella and femoral groove with abrasion chondroplasty of the femoral groove. Dr. Nichols found diffuse grade 2 chondromalacia of the patella, that appellant had previously undergone a meniscectomy and that meniscal rim was stable.

In a report dated June 27, 1997, Dr. Nichols found that appellant reached maximum medical improvement of his right lower extremity on that date. He found that appellant had flexion of 120 degrees, extension of 0 degrees and that he had additional impairment of 15 percent due to weakness, atrophy, pain or discomfort. Dr. Nichols concluded that appellant had 17 percent permanent impairment of his right lower extremity.

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, 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 descriptions of the impairment. 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.⁹ In this case, Dr. Nichols' report does not clearly explain the basis for his finding of the additional 15 percent impairment.

Board cases are clear that, if an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. In such cases, the Office may rely on the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹⁰

The Office medical adviser reviewed the medical evidence on September 30, 1997. He found that appellant had previously undergone a partial meniscectomy for a two percent impairment of the right lower extremity.¹¹ He awarded five percent for crepitation of the

⁸ *John M. Gonzales, Jr.*, 48 ECAB 357, 361 (1997).

⁹ *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

¹⁰ *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

¹¹ A.M.A., *Guides*, 85, Table 64.

patellofemoral joint and relied on Table 62 of the A.M.A., *Guides* for his rating.¹² As noted above, the Board has found that Table 62 may not be utilized to determine the degree of impairment due to arthritis without the appropriate “sunrise view” x-rays. As the Office medical adviser did not rely on these x-rays in reaching his impairment rating, his opinion is of diminished probative value. The Board, therefore, finds that the case must be remanded to the Office for further development, a medical opinion that is consistent with the A.M.A., *Guides* and an appropriate decision.¹³

The December 2 and November 6, 1997 decisions of the Office of Workers’ Compensation Programs are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
May 23, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² A.M.A., *Guides*, 83.

¹³ Due to the disposition of this issue, it is not necessary to consider whether the Office abused its discretion by refusing to reopen appellant’s claim for consideration of the merits on June 16 and March 11, 1998.