

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of APOLOS H. CUFFEE and DEPARTMENT OF THE NAVY,  
NORFOLK NAVAL SHIPYARD, Portsmouth, VA

*Docket No. 99-731; Submitted on the Record;  
Issued November 22, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

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

The Board has duly reviewed the case record in the present appeal and finds that appellant has no more than a two percent permanent impairment of the right lower extremity for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act provides that if there is permanent disability involving the loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of specified members, functions or organs of the body.<sup>1</sup> 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 has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>2</sup>

On October 2, 1995 appellant, then a 52-year-old welder, sustained a medial meniscus tear of the right knee in the performance of duty. The record shows that on December 12, 1995, he underwent arthroscopic surgery of the right knee. On June 3, 1996 appellant filed a claim for a schedule award.

In a memorandum dated March 3, 1997, the Office medical adviser indicated that appellant had a two percent permanent impairment of the right lower extremity due to a partial

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<sup>1</sup> 5 U.S.C. § 8107(a).

<sup>2</sup> *James Kennedy, Jr.*, 40 ECAB 620 (1989); *Charles Dionne*, 38 ECAB 306 (1986).

medial meniscectomy performed on December 12, 1995, based on Table 64 at page 85 of the fourth edition of the A.M.A., *Guides*.

In a report dated March 18, 1997, Dr. Arthur Wardell, appellant's attending Board-certified orthopedic surgeon, stated:

“[Appellant] has a two percent permanent impairment of his lower extremity due to a partial medial meniscectomy. He has a 3 percent permanent impairment due to cartilage fracture involving the articular surface of the medial condyle. Since this is not rated in Table 64, Table 64 must be used as the guide and the articular cartilage damage must be compared in severity to a partial medial meniscectomy. It is worse, therefore [appellant] should get a three percent permanent impairment due to this. He also has a 5 percent permanent impairment due to ongoing weakness. [Appellant] has reached maximum medical improvement. His subjective complaints are pain, discomfort, weakness and swelling.”

In a memorandum dated April 1, 1997, the district medical adviser indicated that the medical evidence established that appellant had a two percent permanent impairment due to his partial medial meniscectomy.

In a report dated October 9, 1997, Dr. Sidney W. Tiesenga, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on examination which included alignment of the right knee at 5 degrees of valgus and a range of motion of 0 to 135 degrees of flexion and some mild medial laxity. He indicated there was 1+ subpatellar crepitus but no effusion. Dr. Tiesenga indicated that thigh and calf measurements were symmetrical, indicating no atrophy. He stated that, based on the fourth edition of the A.M.A., *Guides*, appellant was entitled to a two percent permanent impairment for his partial medial meniscectomy. Dr. Tiesenga stated that x-rays of appellant's knee did not reveal any significant narrowing of the apparent joint space and that he had satisfactory stability and range of motion.

By decision dated November 12, 1997, the Office granted appellant a schedule award for a two percent permanent impairment of the right lower extremity.<sup>3</sup>

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

Dr. Tiesenga, the Office referral physician and a Board-certified orthopedic surgeon, examined appellant and correctly applied the findings on examination to the fourth edition of the A.M.A., *Guides*. In his October 9, 1997 report, he found that appellant had a two percent permanent impairment based upon a partial medial meniscectomy according to Table 64 at page 85 of the A.M.A., *Guides*.

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<sup>3</sup> The Board notes that this case record contains documents which were submitted subsequent to issuance of the Office's November 12, 1997 decision. The Board has no jurisdiction to consider this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

In his March 18, 1997 report, Dr. Wardell, appellant's attending Board-certified orthopedic surgeon, found that appellant had a ten percent permanent impairment which included a five percent impairment due to weakness, a three percent impairment due to a cartilage fracture, and a two percent impairment due to the partial medial meniscectomy. However, section 3.2i of the A.M.A., *Guides* at page 84 notes that muscle weakness or atrophy is included in the diagnosis-based estimates of impairment. Thus, the two percent impairment for a partial medial meniscectomy would include consideration of weakness. Therefore, it was not appropriate to assign an additional five percent impairment for weakness. Additionally, Dr. Wardell assigned a three percent impairment based upon a cartilage fracture involving the articular surface of the medial condyle. However, as he acknowledged in his March 18, 1997 report, there is no provision in Table 64 for an impairment based on a cartilage fracture.

Dr. Tiesenga's determination of appellant's permanent impairment of his right lower extremity is the only medical report of record that correctly applies the A.M.A., *Guides*, and therefore represents the weight of the medical evidence.

The decision of the Office of Workers' Compensation Programs dated November 12, 1997 is affirmed.

Dated, Washington, DC  
November 22, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member