

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARC BUTLER and U.S. TREASURY DEPARTMENT,  
CUSTOMS SERVICE, Los Angeles, CA

*Docket No. 01-109; Submitted on the Record;  
Issued August 2, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 10 percent permanent impairment of the right lower extremity.

On March 1, 1999 appellant, then a 41-year-old customs inspector, filed a notice of traumatic injury alleging that on February 8, 1999 he was injured in the performance of duty. Appellant explained on his CA-1 claim form that he was working as a firearms instructor when he stepped down to hang a target and felt a sharp pain in his right knee. He related that he felt a similar pain on March 1, 1999.

Appellant was initially treated for a right knee sprain with a splint and referred by his family physician for orthopedic consultation.

In a March 23, 1999 report, Dr. Warren G. Kramer, a Board-certified orthopedic surgeon, indicated that appellant was 19 years post status right anterior cruciate ligament (ACL) tear and status post right total medial meniscectomy performed in 1980. He related that appellant had most recently hyperextended his knee at work and was having significant feelings of giving way of the knee at least twice a day with normal activities. Dr. Kramer reported on physical examination that findings were pertinent for gross instability of the knee consistent with right anterior cruciate ligament tear and stretching of a prior reconstruction. An x-ray was noted as showing an orthopedic soft tissue staple in the mid lateral aspect of the tibial plateau at the level of physical scar. He also noted that because of the gross instability, Dr. Kramer recommended that appellant undergo ACL reconstruction and arthroscopic evaluation and treatment of his injury.

Appellant underwent arthroscopic surgery of the right knee with ligament reconstruction on April 8, 1999. The postoperative diagnosis included right anterior cruciate ligament tear, status post right extra-articular repair, status post medial meniscus resection, mild degenerative arthritis and posterolateral instability.

On June 4, 1999 the Office of Workers' Compensation Programs accepted the claim for a right anterior cruciate ligament re-tear and appellant received appropriate compensation for wage loss.

On March 8, 2000 appellant filed a Form CA-7 claim for a schedule award.

The Office referred appellant for a second opinion evaluation with Dr. Thomas R. Dorsey, a Board-certified orthopedist. In an April 3, 2000 report, Dr. Dorsey related appellant's history of injury, medical treatment, symptoms and complaints of right knee stiffness. On physical examination, he noted that appellant did not show full extension of the right knee. Goniometer measurements of the right knee showed range of motion of 25 to 100 degrees. Dr. Dorsey further reported that there was no tenderness, a negative pivot shift test, a slight anterior drawer, no varus or valgus instability. Although he found slight swelling of the right knee, there was also no effusion. Measurements indicated right thigh 47 centimeters, left thigh 46 centimeters, right calf 38 centimeters and left calf 39 centimeters. Addressing questions posed by the Office, Dr. Dorsey stated that range of motion of the right knee compared to the left knee was 100/100, with extension 0/0. He found no varus or valgus deformity, no true bony ankylosis, no weakness and no atrophy. The diagnosis was listed as status post right knee anterior cruciate ligament reconstruction with decreased range of motion. According to Dr. Dorsey, the date of maximum medical improvement was January 1, 2000, which was six months after appellant's work injury.

In a report dated July 13, 2000, an Office medical adviser reviewed the report of Dr. Dorsey for a determination of the impairment of appellant's right lower extremity. He noted that according to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) appellant had "impairment due to loss of range of motion: for loss of extension and flexion, 10 [percent] as per Tables 40 and 41, page 78." The total impairment for the right lower extremity was listed as 10 percent and the date of maximal improvement was January 1, 2000.

On September 1, 2000 the Office issued a schedule award for a 10 percent permanent impairment of the right lower extremity. The period of the award was from January 1 to July 20, 2000.

The Office finds that appellant has no more than a 10 percent permanent impairment of the right lower extremity for which she received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing federal regulations,<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>3</sup> However, the Act does not

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<sup>1</sup> 5 U.C.S. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

specify the manner in which the percentage of loss shall be determined. 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>4</sup>

In this case, the Office properly referred appellant for an evaluation with Dr. Dorsey, a Board-certified orthopedic specialist, to ascertain the nature and extent of appellant's permanent impairment. He reported physical findings, but did not provide an opinion on appellant's permanent impairment of the left lower extremity under the A.M.A., *Guides*. Accordingly, the Office sent a copy of Dr. Dorsey's examination report, complete with physical findings, to an Office medical adviser for calculation of appellant's permanent impairment under the A.M.A., *Guides* and a recommendation for a schedule award. The Office medical adviser found that appellant had a ten percent permanent impairment for loss of loss of range of motion, including loss of extension and flexion, as set forth at Tables 40 and 41, page 78 of the fourth edition of the A.M.A., *Guides*.

It is well settled that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>5</sup> This also holds true when the attending physician has not provided an opinion but the Office has sent appellant for a second opinion evaluation. When the second opinion physician does not calculate a permanent impairment rating, the Office may rely on the Office medical adviser to make such a calculation.<sup>6</sup>

The Board finds the opinion of the Office medical adviser in this case to be sufficiently rationalized and based upon a proper application of the physical findings to the A.M.A., *Guides*.<sup>7</sup> The Board, therefore, concludes that the Office properly issued appellant a schedule award for a 10 percent permanent impairment of the right lower extremity.

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<sup>4</sup> See 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); see *Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Ronald J. Pavlik* 33 ECAB 1596 (1982).

<sup>6</sup> See generally, *Michael D. Nielsen*, 49 ECAB 455 (1998).

<sup>7</sup> The Office medical adviser's finding of 10 percent impairment for flexion of less than 110 percent is appropriate under Table 41, page 78. However, Table 40 is not applicable since it pertains to hip motion impairments and not knee impairment.

The September 1, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
August 2, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Priscilla Anne Schwab  
Alternate Member