U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD JAMERSON and DEPARTMENT OF THE NAVY, San Diego, CA

Docket No. 01-264; Submitted on the Record;
Issued August 17, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

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

On September 3, 1998 appellant, then a 48-year-old supervisory employee-relations specialist, sustained an injury when he fell down a flight of stairs in the performance of his federal duties. The Office of Workers' Compensation Programs accepted the claim for right quadriceps tendon tear and authorized surgery on September 18, 1998. Appellant stopped work on the date of injury and was released to regular duty with restrictions on December 2, 1998.

Dr. Janet Dunlap, a Board-certified orthopedic surgeon and appellant's treating physician, performed surgery on September 18, 1998 and subsequently released him for duty. In a December 2, 1998 report, Dr. Dunlap reported that, following surgery, appellant had occasional mild aching pain in the right distal quadriceps and superior knee region. She indicated however that appellant had full range of motion of the right knee, that his quadriceps girths were normal and that appellant had excellent knee strength and function.

On September 15, 1999 an Office medical adviser reviewed the record and assessed a two percent impairment of the right lower extremity, in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), based on Dr. Dunlap's December 2, 1998 report.

By decision dated October 1, 1999, the Office issued a schedule award for two percent permanent impairment of the right lower extremity. Appellant disagreed with the decision and requested an oral hearing, which was held on March 28, 2000.

By decision dated June 1, 2000, an Office hearing representative vacated the prior decision and remanded the case to the Office for further development. The Office hearing representative noted that the Office medical adviser properly applied the A.M.A., *Guides* to

Dr. Dunlap's December 2, 1998 assessment of appellant's condition in determining impairment. However, she also determined that Dr. Dunlap in a later report dated March 1, 2000 related that appellant had developed new loss of strength, demonstrated by slight atrophy of the thigh due to the original injury. The Office hearing representative thereafter directed the Office to obtain all of appellant's medical records and refer him for a second opinion examination to determine the extent of impairment, using the A.M.A., *Guides*, considering any condition related to the 1998 injury.

On remand, the Office referred appellant, along with a statement of accepted facts and medical records, including those involving treatment of appellant's prior knee injury to Dr. Thomas Dorsey, a Board-certified orthopedic surgeon, for a second opinion orthopedic evaluation.

In his July 20, 2000 report, Dr. Dorsey reviewed appellant's history, medical records, the statement of accepted facts and his physical examination of appellant. He noted that appellant sustained a work-related right quadriceps tendon tear, which was surgically repaired on September 18, 1998 and that appellant had a previous nonindustrial injury to his right knee due to a golf accident, which was surgically repaired in 1996. On examination, Dr. Dorsey found that straight leg raising was negative in the sitting and supine positions; that joints in the lower extremities appeared normal, that range of motion and strength of the hips, knees, ankles and feet were normal and that sensation in the left lower extremity was normal. He further stated:

> "It is clear that [appellant's] right quadriceps tendon rupture was related to the fall of September 3, 1998. Therefore, his quadriceps tendon condition is on the basis of direct causation. On post-injury MRI [magnetic resonance imaging] [scan], [appellant] did not show significant tearing of the medial meniscus. However, on his most recent MRI [scan] of April 12, 2000, [appellant] did show some increasing tear of the posterior medial meniscus, which is likely related to the episode of September 3, 1998. The force of injury likely caused a meniscal tear in addition to the quadriceps tendon tear. However, this, in my opinion, is not clinically symptomatic at this time. … In my opinion, his symptoms at this time are due to the fact that he has undergone quadriceps tendon repair."

Dr. Dorsey stated that there were continuing medical residuals of appellant's injury, based on subjective complaints of pain around the area of the distal quadriceps tendon with difficulty bending, stooping and squatting. Appellant had also complained of constant pressure in this area. Dr. Dorsey reported that the subjective complaints were supported by objective findings.

On August 11, 2000 an Office medical adviser reviewed the report of Dr. Dorsey and the medical record for purposes of determining a schedule award. The Office medical adviser reported that appellant had no impairment for loss of motion, strength or muscle atrophy. He determined that, according to Table 11 on page 48 of the A.M.A., *Guides*, appellant had Grade 3 pain with decreased sensation which interferes with function (60 percent) of the femoral nerve/ quadriceps muscles, which, according to Table 68, page 89, allows a maximum of 7 percent lower extremity impairment. The Office medical adviser concluded that this resulted in four percent impairment of the right lower extremity for residual pain, which interferes with function

as a result of having undergone repair of his quadriceps tendon. The Office medical adviser noted that MRI scan evidence of a tear of the medial meniscus, results in an additional two percent of the right lower extremity according to Table 64 on page 85 of the A.M.A., *Guides*. He stated that utilizing the combined values for four percent impairment for pain and two percent impairment for MRI scan evidence of a tear of the medial meniscus, this resulted in six percent impairment of the right lower extremity.

By decision dated August 25, 2000, the Office issued appellant a schedule award for an additional four percent permanent impairment of the right leg. The Office noted in the decision that this award was in addition to the two percent award of the right lower extremity, which he previously received for a total of six percent impairment of the right leg.

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

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not 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 regulations as the appropriate standard for evaluating schedule losses.

In the present case, the only medical report of record that rated appellant based on his accepted right tendon tear with surgery and medial meniscus tear was the Office medical adviser's August 11, 2000 report in which he found a six percent permanent impairment of the right lower extremity.[3] The Office medical adviser determined that there was no impairment for loss of motion, strength or muscle atrophy. He applied the A.M.A., *Guides* to the description of appellant's discomfort, rated it as a Grade 3 for pain/decreased sensation, which does interfere with function of the femoral nerve/quadriceps muscle and rated his impairment at 4 percent for residual pain.[4] The Office medical adviser then multiplied 60 percent for pain/decreased sensation with 7 percent maximum allowed for dysesthesia or abnormal sensation of the femoral nerve to determine that appellant had a 4 percent impairment of the right lower extremity. The Office then determined that the tear of the medial meniscus as demonstrated by MRI scan resulted in a two percent impairment.[5] The Office medical adviser then properly combined values for four percent impairment for pain and two percent for the meniscus tear and determined that appellant had a six percent impairment of the right lower extremity.

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *James A. England*, 47 ECAB 115 (1995).

[4] A.M.A., *Guides* at 48, Table 11; *Id* at 89, Table 68.

[5] *Id.* at 85, Table 64.

The Office initially awarded appellant a two percent permanent impairment of appellant's lower extremity and then an additional four percent for the right leg. The record contains no medical evidence, correctly based on the A.M.A., *Guides*, which establishes that appellant has a greater than six percent permanent impairment of the right lower extremity based on his work-related injury. Therefore, the Board finds that appellant failed to establish entitlement greater than the six percent of permanent impairment schedule award for which he has received.

The August 25, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member