

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD W. GREENE and DEPARTMENT OF THE AIR FORCE,
LANGLEY AIR FORCE BASE, Langley, VA

*Docket No. 00-1054; Submitted on the Record;
Issued February 15, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he has greater than a two percent permanent impairment for loss of use of his left lower extremity, for which he received a schedule award.

On August 19, 1998 appellant, a 45-year-old technician, injured his left knee when he slipped on a wet carpet. Appellant filed a claim for benefits on August 19, 1998, which the Office of Workers' Compensation Programs accepted for left knee sprain and subsequent arthroscopy.

On November 30, 1998 appellant filed a Form CA-7 claim for a schedule award based on the loss of use of his left lower extremity. In support of his claim, appellant submitted a November 30, 1998 treatment report from Dr. Loel Z. Payne, a specialist in orthopedic surgery and appellant's treating physician. He stated:

“[Appellant] has done very well with his knee. He feels about 80 percent better. He only has occasional mild discomfort on rainy days. Still walks with a slightly antalgic gait. There is no further swelling. The knee has full range of motion with good stability in all planes.

“[Appellant] has reached maximum medical improvement at this point. He has regained full range of motion. Based upon a diagnosis code for partial meniscectomy, he would have a 10 percent lower extremity impairment rating. This correlates to a four percent whole person impairment.”

Dr. Payne released appellant to return to full duty.

By letter dated October 18, 1999, the Office advised appellant that it required additional medical evidence from his attending physician in support of his claim for a schedule award. Accompanying the letter was a letter directed to appellant's attending physician, stating that the

Office required an evaluation of appellant's permanent impairment pursuant to the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (fourth edition). Appellant did not submit an impairment evaluation to the Office.

In a schedule award work sheet dated November 10, 1999, the Office medical adviser found that appellant had a two percent permanent impairment based on loss of use of his left lower extremity. Relying on Dr. Payne's statement that appellant underwent a partial meniscectomy of the left knee, the Office medical adviser accorded appellant a two percent impairment pursuant to Table 64, page 85 of the A.M.A., *Guides*.

On November 22, 1999 the Office granted appellant a schedule award for a two percent permanent impairment for loss of use of his left lower extremity for the period September 18 to October 28, 1999 for a total of 5.76 weeks of compensation.

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

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁴

In the instant case, the Office determined that appellant had a two percent permanent impairment of his left lower extremity based on Dr. Payne's statement that appellant underwent a partial meniscectomy of the left knee. The Office medical adviser then applied this finding to the applicable table and figures of the A.M.A., *Guides* to arrive at the total percentage of impairment in appellant's left lower extremity.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a two percent permanent impairment for loss of use of his left lower extremity, for which he has received a schedule award from the Office and that appellant has failed to provide probative, supportable medical evidence that he has greater than the two percent impairment already awarded.

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

The decision of the Office of Workers' Compensation Programs dated November 22, 1999 is hereby affirmed.

Dated, Washington, DC
February 15, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member