

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD MILLER and DEPARTMENT OF THE NAVY, NAVAL
WEAPONS STATION, Yorktown, VA

*Docket No. 99-2504; Submitted on the Record;
Issued January 16, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant is entitled to more than an 11 percent permanent impairment of the left lower extremity, for which he has already received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant is not entitled to more than an 11 percent permanent impairment of the left lower extremity, for which he has already received a schedule award.

On January 3, 1994 appellant, then a 39-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging on that date his left leg was mashed between two batteries. He also alleged that his stomach and right leg muscles caused him pain. Appellant stopped work on January 4, 1994.¹

By letter dated April 15, 1994, the Office of Workers' Compensation Programs accepted appellant's claim for ganglion of the left knee and a contusion of the left knee.

On October 14, 1994 appellant filed a claim (Form CA-7) for a schedule award.

By decision dated March 16, 1995, the Office granted appellant a schedule award for an 11 percent permanent impairment of the left lower extremity for the period September 24, 1994 through May 3, 1995.

The Office received a June 16, 1999 medical report of Dr. John E. Grasinger, a Board-certified orthopedic surgeon and appellant's treating physician, finding that appellant had a 17 percent impairment of the left lower extremity.

¹ Appellant was separated from the employing establishment effective July 8, 1994 due to his physical inability to perform the duties of his position as a motor vehicle operator.

On June 22, 1999 an Office medical adviser reviewed appellant's medical records and determined that appellant had a seven percent permanent impairment of the left lower extremity.

By decision dated July 6, 1999, the Office found that appellant was not entitled to more than an 11 percent permanent impairment of the left lower extremity.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation,³ sets 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 of loss of use.⁴ 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 under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵

In his June 16, 1999 medical report, Dr. Grasinger stated:

"Range of motion from 0 to 110 degrees flexion represents a 4 percent impairment of the left lower extremity. Atrophy of the left quadriceps of ½ inch represented an 8 percent impairment of the left lower extremity. Pain and paresthasias in the saphenous nerve distribution of the left leg represents a 2 percent impairment of the left leg and the 1 millimeter narrowing of the medial aspect of the joint on weightbearing x-ray compared to the opposite side represents a 3 percent impairment of the left lower extremity. The measured interval of 4 millimeters equals the stated normal but this is 1 millimeter smaller than the opposite normal knee, therefore, the impairment rating of 7 percent from Table 62, section 3-83 of the manual is reduced to 3 percent. The total impairment is therefore calculated at 17 percent which is considered permanent and stationary."

Dr. Grasinger did not properly apply the tables in the fourth edition of the A.M.A., *Guides* to find that appellant had a 17 percent permanent impairment of the left lower extremity.

An Office medical adviser, however, reviewed appellant's medical records, including Dr. Grasinger's June 16, 1999 medical report and properly determined that appellant had a seven percent permanent impairment of the left lower extremity based on the fourth edition of the

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

³ 20 C.F.R. § 10.404.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

A.M.A., *Guides*. Utilizing Dr. Grasinger's measurements, the Office medical adviser determined that range of motion from 0 to 110 degrees constituted a 0 percent impairment based on page 78, Table 41, atrophy of 1.2 centimeters constituted a 5 percent impairment based on page 77, Table 37, saphenous nerve pain constituted a 2 percent impairment based on page 89, Table 68 and cartilage intervals of 4 millimeters constituted a 0 percent impairment based on page 83, Table 62.

The Board has held that, when an attending physician's report gives an estimate of permanent impairment but is not based on a proper application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly used the A.M.A., *Guides*.⁶ The Board concludes that in the present case the Office medical adviser properly applied the A.M.A., *Guides* to the description of the impairment provided by Dr. Grasinger. There is no other evidence of record that appellant has greater than an 11 percent permanent impairment of the left lower extremity for which he has received a schedule award.

The July 6, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 16, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

⁶ *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).