

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS G. PHILLIPS and U.S. POSTAL SERVICE,  
POST OFFICE, Omaha, NE

*Docket No. 00-2075; Submitted on the Record;  
Issued June 1, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has more than a 16 percent permanent impairment of the left lower extremity, for which he received a schedule award.

The Office of Workers' Compensation Programs accepted that on December 17, 1996 appellant, then a 47-year-old rural letter carrier, sustained medial and lateral dislocations of the left knee when he slipped and fell on ice. The Office authorized an April 4, 1996 arthroscopy performed by Dr. Lynn Crosby, a Board-certified orthopedic surgeon, who performed a reconstruction of the anterior cruciate ligament, a partial medial meniscectomy and a partial lateral meniscectomy. On January 9, 1987 she removed hardware from appellant's left knee. On August 13, 1999 Dr. Michael McGuire, a Board-certified orthopedic surgeon, performed a left knee arthroscopy with a partial medial and lateral meniscectomy.

In a report dated October 5, 1999, Dr. McGuire found that appellant had reached maximum medical improvement. He applied Table 64 on page 85 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993), to appellant's left knee and concluded that he had a 10 percent impairment due to his partial medial and lateral meniscectomies, a 17 percent impairment due to moderate laxity of the anterior cruciate ligament and a 7 percent impairment due to degenerative changes of the lateral femoral condyle. Dr. McGuire added together his impairment findings and determined that appellant had a 34 percent permanent impairment of the left lower extremity.

On December 12, 1999 an Office medical adviser reviewed Dr. McGuire's October 5, 1999 report. He concurred with Dr. McGuire's finding that appellant had a 10 percent impairment due to his partial medial and lateral meniscectomies according to Table 64 on page 85 of the A.M.A., *Guides*. The Office medical adviser disagreed with Dr. McGuire's finding that appellant had moderate laxity of the anterior cruciate ligament. He stated:

"The operative report is very clear that under anesthesia (which would be far superior to assessing laxity over a physical examination in a conscious patient) that the claimant had a 'stable' knee. Dr. McGuire's operative report indicates there was no medial or lateral laxity. The only finding that implies laxity is 'a 1+ anterior drawer sign, but no lateral pivot shift or signs of anterior cruciate ligament insufficiency."

The Office medical adviser found that appellant had a 7 percent impairment due to mild laxity of the anterior cruciate ligament as provided by Table 64. He further disagreed with Dr. McGuire's finding that appellant had a seven percent impairment due to degenerative changes. He stated:

"Dr. McGuire says the 7 percent is derivable from Table 64. Table 64 offers no basis to offer an impairment rating due to degenerative arthritic change. Thus, the 7 percent offered by Dr. McGuire for that consideration cannot be accepted for schedule award purposes."

The Office medical adviser combined the 10 percent impairment for the meniscectomies with the 7 percent impairment due to laxity and concluded that appellant had a 16 percent permanent impairment of the left lower extremity.

By decision dated December 14, 1999, the Office granted appellant a schedule award for a 16 percent permanent impairment of the left lower extremity. The period of the award ran from September 10, 1999 to July 29, 2000 for a total of 46.08 weeks.

In a letter dated April 13, 2000, appellant requested reconsideration of his claim. In support of his request, appellant submitted a report dated February 10, 2000 from Dr. McGuire. He indicated that he had reviewed the findings of the Office medical adviser. Dr. McGuire stated:

"I will insist that the conditions about the knee, are as I described. [Appellant] has a combination of problems including partial medial and lateral meniscectomies, status post anterior cruciate ligament reconstruction and post-traumatic degenerative changes of the lateral femoral condyle. I believe that I have accurately and fairly documented the impairment resulting from those injuries and findings."

Dr. McGuire used the Combined Value Chart and concluded that appellant had a 30 percent permanent impairment of the left lower extremity.

Appellant also submitted a report from Dr. Samuel P. Phillips, a Board-certified orthopedic surgeon. On examination, Dr. Phillips found “[m]oderate residual ACL [anterior cruciate ligament] laxity to anterior drawer, Lachman and pivot shift testing (Grade I pivot shift).” He diagnosed status post ACL reconstruction “with moderate residual ACL laxity,” medial and lateral partial meniscectomies, mild degenerative arthritis of the medial compartment as seen by x-ray, mild degenerative arthritis of the lateral compartment as seen by arthroscopy, painful hardware and patellofemoral arthrosis. Dr. Phillips concluded that appellant had a 30 percent impairment of the left lower extremity.

On April 29, 2000 an Office medical adviser found that the Office did not have grounds to modify its prior decision, based on the report of Dr. McGuire. By decision dated May 18, 2000, the Office denied modification of its December 14, 1999 decision.

The Board finds that this case is not in posture for decision.

In this case, the record contains a conflict in medical opinion regarding the degree of laxity of appellant’s anterior cruciate ligament. In a report dated October 5, 1999, Dr. McGuire, a Board-certified orthopedic surgeon, evaluated appellant’s left knee and found that, according to Table 64 on page 85 of the A.M.A., *Guides*, he had a 10 percent impairment due to his partial medial and lateral meniscectomies, a 17 percent impairment due to moderate laxity of the anterior cruciate ligament and a 7 percent impairment due to degenerative changes of the lateral femoral condyle. He initially concluded that appellant had a 34 percent permanent impairment; however, in a supplement report dated April 13, 2000, Dr. McGuire utilized the Combined Values Chart and opined that appellant had a 30 percent permanent impairment of the left lower extremity. Appellant also submitted a report dated April 7, 2000 from Dr. Phillips, who diagnosed status post ACL reconstruction “with moderate residual ACL laxity,” medial and lateral partial meniscectomies, mild degenerative arthritis of the medial compartment as seen by x-ray, mild degenerative arthritis of the lateral compartment as seen by arthroscopy, painful hardware and patellofemoral arthrosis. He concluded, without citing to the appropriate tables and pages of the A.M.A., *Guides*, that appellant had a 30 percent permanent impairment of the left lower extremity.

The Office medical adviser reviewed the report from Dr. McGuire and agreed with his finding that appellant had a 10 percent impairment due to his medial and lateral partial meniscectomies.<sup>1</sup> He further properly found that appellant was not entitled to an additional award for degenerative arthritis according to Table 64 on page 85 the A.M.A., *Guides*. The Office medical adviser, however, disagreed with Dr. McGuire’s finding that appellant had a 17 percent impairment of the left lower extremity due to moderate laxity of the anterior cruciate ligament. Dr. McGuire found that, according to the surgical reports, appellant’s knee demonstrated only mild laxity. He thus found that appellant had a seven percent impairment due to mild laxity of the anterior cruciate ligament.<sup>2</sup> The Office medical adviser combined the

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<sup>1</sup> A.M.A., *Guides* at 85, Table 64.

<sup>2</sup> *Id.*

impairment ratings and concluded that appellant had a 16 percent permanent impairment of the left lower extremity.

Section 8123(a) of the Federal Employees' Compensation Act,<sup>3</sup> provides in pertinent part: "[I]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination."<sup>4</sup>

In this case, a conflict exists between the Office medical adviser, who found that appellant had mild laxity of the anterior cruciate ligament and the opinions of appellant's physicians, Drs. McGuire and Phillips, who found that appellant had moderate laxity of the anterior cruciate ligament.

The case will be remanded for the Office to refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist for a rationalized medical opinion regarding whether appellant has mild or moderate laxity of the anterior cruciate ligament of the left knee and, based on this finding, to provide the appropriate impairment rating.

The May 18, 2000 and December 14, 1999 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further proceedings consistent with this opinion by the Board.

Dated, Washington, DC  
June 1, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8123(a).