

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERB DARSEE and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICES, Houston, TX

*Docket No. 00-2229; Submitted on the Record;
Issued June 25, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to more than a five percent permanent impairment of his right lower extremity for which he received a schedule award.

On February 20, 1998 appellant, then a 46-year-old special agent, filed a notice of traumatic injury claiming that he strained his right knee and right shoulder when moving office furniture. The Office of Workers' Compensation Programs accepted appellant's claim for right shoulder and knee sprains on June 6, 1998. Appellant filed a claim for a schedule award on March 10, 1999.

By letter dated March 17, 1999, the Office requested that Dr. Scott R. Stanislaw, a Board-certified orthopedic surgeon and appellant's treating physician, assess appellant's level of permanent impairment. Dr. Stanislaw submitted a report dated June 10, 1999, diagnosed "R[ight] knee tendinitis" and gave appellant a 14 percent impairment rating for his right knee, a 31 percent impairment for his hip and an 18 percent impairment of the whole person. He opined that appellant had reached maximum medical improvement on May 19, 1999.

On November 17, 1999 the Office awarded appellant a seven percent permanent impairment of the right upper extremity from May 19 to October 18, 1999.¹

The Office requested that Dr. Stanislaw determine whether appellant had an additional impairment of the right lower extremity. In a report dated February 4, 2000, Dr. Stanislaw stated:

"In regards to [appellant's] right hip being included in his impairment rating, this was done to reflect impairment to the lower right extremity due to his knee injury. [He] most likely had hip pain and impairment due to allowing for mobility of his

¹ Appellant has stated that he is "not contesting" the schedule award for his right upper extremity.

injured right knee. Since all ROM tests were consistent, it is fair to include this rating in his final impairment rating.”

By report dated May 9, 2000, the Office medical adviser determined that appellant’s permanent impairment of the right lower extremity was five percent. He also agreed that appellant’s maximum medical improvement was achieved on May 19, 1999. The Office medical adviser noted that Dr. Stanislaw, in his impairment ratings, used the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and not the current, fourth edition.

By decision dated May 16, 2000, the Office awarded appellant a five percent impairment of the right lower extremity. The period of the award was October 19, 1999 to January 27, 2000.

The Board has reviewed the case record and finds that this case is not in posture for decision.

Under section 8107 of the Federal Employees’ Compensation Act² and section 10.404 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. 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 for all claimants the Office adopted the A.M.A., *Guides*⁴ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

Before the A.M.A., *Guides* may be utilized, however, a description of appellant’s impairment must be obtained from appellant’s attending physician. The Federal (FECA) Procedure Manual provides that, in obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a “detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent description of the impairment.”⁶ This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁷

In this case, appellant’s attending physician, Dr. Stanislaw, reported on June 10, 1999, that appellant had a 14 percent impairment of his right knee and a 31 percent impairment of his

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* (4th ed. 1993).

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

⁷ *Noe L. Flores*, 49 ECAB 344 (1998).

right hip. However, Dr. Stanislaw incorrectly used the third edition of the A.M.A., *Guides*, instead of the current, fourth edition, to arrive at these levels of impairment. The Office medical adviser, in his May 9, 2000 report, used the fourth edition of the A.M.A., *Guides*, but did not explain how he arrived at the percentages of impairment. The Board notes that, by using Table 40, page 78 of the A.M.A., *Guides*, appellant should be entitled to somewhere between 8 and 20 percent permanent impairment of the right lower extremity for his loss of hip range of motion. Based upon the findings reported by Dr. Stanislaw, maximum hip flexion is 98 degrees, which equals 2 percent impairment, extension is negative 4 degrees, which equals 0 percent, abduction is 25 degrees, which equals 5 percent, adduction is 23, which equals 0, external rotation is 24, which equals approximately 3 percent and internal rotation is 11, which equals approximately 2 percent. Together the percentages equal approximately 11 percent impairment.

In this case, appellant's treating physician used the incorrect edition of the A.M.A., *Guides*, the Office should have requested that appellant's physician resubmit an impairment rating evaluation using the correct edition. On remand, the Office should refer appellant's case to Dr. Stanislaw, appellant's treating physician and requested that he submit a determination of appellant's level of permanent impairment for his right lower extremity by using the 4th edition of the A.M.A., *Guides* and by showing how he arrived at his conclusions. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The May 16, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
June 25, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member