

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAVERNA S. PUGH and DEPARTMENT OF THE AIR FORCE,
SHEPPARD AIR FORCE BASE, TX

*Docket No. 00-2653; Submitted on the Record;
Issued May 10, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

This case is on appeal before the Board for the second time. By decision dated July 3, 2000, the Board, *inter alia*, modified the September 28, 1998 decision of the Office of Workers' Compensation Programs to reflect appellant's entitlement to a schedule award for a seven percent permanent impairment of her left lower extremity.¹ Whereas the Office initially granted appellant a schedule award for a two percent permanent impairment of her left lower extremity, the Board found appellant entitled to an award for a seven percent permanent impairment of her left lower extremity.

In accordance with the Board's finding, the Office issued a decision on August 1, 2000 granting appellant a schedule award for an additional five percent permanent impairment of her left lower extremity. Appellant filed a timely appeal with the Board on August 15, 2000.²

The Board finds that appellant has not establish that she has more than a seven percent permanent impairment of her left lower extremity.

¹ Docket No. 99-1407. The Board also affirmed the Office's February 11, 1999 decision denying reconsideration. The Board's July 3, 2000 decision incorporated herein by reference. The Board's prior decision resolved a number of additional issues that are not presently on appeal.

² Appellant submitted additional medical evidence on appeal. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

Section 8107 of the Federal Employees' Compensation Act³ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as an appropriate standard for evaluating schedule losses, and the Board has concurred in such adoption.⁴

As set forth in the Board's prior decision dated July 3, 2000, appellant's current schedule award for permanent impairment of her left lower extremity is comprised of a two percent impairment rating for her August 29, 1997 partial lateral meniscectomy⁵ and a five percent impairment rating for arthritis.⁶ When combined, the two impairments represent a total impairment of seven percent in accordance with the Combined Values Chart at page 322 of the A.M.A., *Guides*.

Appellant has not provided any probative medical evidence that she has greater than a seven percent permanent impairment of her left lower extremity. As the Board provided an exhaustive review of the record when the claim was previously on appeal, and the relevant findings are incorporated herein by reference, the Board need not revisit the evidence considered by the Office prior to the issuance of its February 11, 1999 denial of reconsideration. The only subsequently submitted evidence consists of an April 7, 1999 report from Dr. Steven D. Ruyle, a Board-certified orthopedic surgeon, and two progress reports dated October 11, 1999 and January 24, 2000 from Dr. Danny R. Bartel, a Board-certified neurologist.⁷ While both physicians noted appellant's ongoing complaints of left knee pain, neither provided an impairment rating in accordance with the A.M.A., *Guides* (4th ed. 1993). As such, the recent reports from Drs. Ruyle and Bartel are of little probative value in determining the extent of appellant's permanent impairment.⁸ Accordingly, appellant has not demonstrated that she has greater than a seven percent permanent impairment of her left lower extremity.

³ 5 U.S.C. § 8107.

⁴ *James J. Hjort*, 45 ECAB 595 (1994).

⁵ This two percent rating properly corresponds with the diagnosis-based estimates provided at Table 64 at page 85 of the A.M.A., *Guides* (4th ed. 1993).

⁶ Table 62 at page 83 of the A.M.A., *Guides* (4th ed. 1993) provides ratings for arthritis impairments based on roentgenographically determined cartilage intervals. The Office's procedural manual clarifies that Table 62, Arthritis Impairments based on x-ray, is not incompatible with Table 64, diagnosis-based impairment estimates. Federal (FECA) Procedural Manual, Part 3 -- Medical, *Schedule Award*, Chapter 3.700 (October 1995).

⁷ Appellant submitted this evidence to the Office while her claim was pending on appeal before the Board under Docket No. 99-1407.

⁸ See *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

The August 1, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 10, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member