

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES E. COBB and TENNESSEE VALLEY AUTHORITY,
WORKERS COMPENSATION DEPARTMENT, Chattanooga, TN

*Docket No. 02-162; Submitted on the Record;
Issued August 27, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent permanent impairment of the right knee for which he has received a schedule award.

On February 15, 1997 appellant, then a 53-year-old electrician, injured his right thigh and right knee while transporting a breaker to the electrical shop for repair. The Office of Workers' Compensation Programs accepted the claim for a right thigh contusion, right knee medial meniscus tear and authorized arthroscopic surgery to repair the injury.¹

Appellant submitted several reports from Dr. W. Carl Dyer, an orthopedic surgeon, dated February 6 to May 20, 1997. He noted a history of appellant's injury indicating that he sustained a right thigh contusion and right knee medial meniscus tear. Dr. Dyer noted that appellant experienced a recurrent hematoma of the right thigh which required evacuation. He noted, in a operative report dated May 12, 1997, that appellant underwent an evacuation of a hematoma of the right thigh; cauterization of multiple bleeding points and a partial excision of the hematoma lining of the right thigh.

Thereafter, appellant submitted various medical records from Dr. Dyer dated July 9, 1997 to January 5, 1998. The July through October 1997 notes indicate appellant's progress after the surgery. Dr. Dyer noted appellant's complaint's of pain in the left knee. X-rays of the left knee revealed narrowing of the medial femoral condyle. In his December 5, 1997 report, Dr. Dyer noted that appellant experienced pain in the right knee. His January 5, 1998 report noted pain and tenderness of the right knee. Dr. Dyer diagnosed appellant with a rupture of the medial meniscus of the right knee and chondromalacia of the medial femoral condyle. He noted x-rays

¹ The record reflects that appellant filed a separate claim with respect to an injury of his left knee, file No. A6-0632916. It is unclear from the record whether this claim was accepted by the Office. However, the present claim applies only to the right knee medial meniscus tear and right thigh contusion.

of the right knee revealed narrowing of the medial compartment of the right knee and irregularity of the femoral condyle.

In a January 19, 1998 operative report, Dr. Dyer, performed an arthroscopy of the right knee; chondroplasty of the medial femoral condyle; excision of the medial shelf; and arthroplasty of the lateral tibial plateau. He diagnosed appellant with chondromalacia of the medial femoral condyle medial shelf of the right knee and chondromalacia of the lateral tibial plateau of the right knee. In progress notes thereafter, Dr. Dyer indicated that appellant was healing properly. He noted that appellant underwent an electromyogram which revealed no abnormalities. In a report dated January 23, 1998, Dr. Dyer noted that appellant was released to work with crutches. He provided additional restrictions on February 17, 1998 noting that appellant could not perform repetitive stooping, bending or walking. Dr. Dyer's treatment notes from February 9 to June 16, 1998 indicated that appellant continued to have discomfort due to his right knee.

On August 12, 1998 Dr. Dyer altered appellant's work restrictions noting that appellant could not walk for prolonged periods and was prohibited from squatting and lifting over 30 pounds.

On November 3, 1998 appellant filed a claim for a schedule award.

In a letter dated November 16, 1998, the Office requested that Dr. Dyer determine the extent of appellant's permanent partial impairment of the meniscus tear of the right knee in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993).

In a letter dated January 26, 1999, Dr. Dyer indicated that appellant had not yet reached maximum medical improvement and, therefore, an impairment rating was premature at this time.

Appellant submitted a magnetic resonance imaging (MRI) scan of the right knee dated November 22, 1999 which revealed no abnormalities.

In a letter dated January 16, 2001, the Office again requested Dr. Dyer to determine the extent of appellant's permanent partial impairment of the meniscus tear of the right knee in accordance with the A.M.A., *Guides*. The record does not reflect that Dr. Dyer responded to this letter.

In a decision dated February 22, 2001, the Office denied appellant's request for a schedule award on the grounds that appellant failed to submit supportive evidence to indicate that he sustained a permanent partial impairment of his right leg as a result of his work injury.

In a letter dated March 1, 2001, appellant requested reconsideration of the decision dated February 22, 2001. He submitted various treatment notes from Dr. Dyer and an impairment rating for his right knee dated January 30, 2001. Dr. Dyer noted that, appellant continued to experience a marked amount of discomfort in his right knee. He noted that appellant had reached maximum medical improvement with respect to both his knees. Dr. Dyer indicated that appellant had an approximately 30 percent permanent physical impairment; loss of physical function to the right lower extremity as a whole as it related to the right knee as a result of the

quad atrophy that damaged the right knee and the quad mechanism; with persistent defect; and persistent and recurrent pain in the right knee. He did not reference the A.M.A., *Guides*.

Dr. Dyer's report and the case record were referred to the Office's medical adviser who determined that appellant sustained a two percent impairment of the right lower extremity.

In a letter dated June 26, 2001, the Office requested Dr. Dyer to determine the extent of appellant's permanent partial impairment of the meniscus tear of the right knee in accordance with the A.M.A., *Guides* (5th ed. 2001). The Office provided Dr. Dyer with a copy of the medical advisers calculation of a two percent permanent impairment of the right knee and requested that he comment on these findings and advise of any additional factors which would provide a higher impairment rating for appellant than already calculated.

In a letter dated June 29, 2001, Dr. Dyer indicated that appellant sustained a 30 percent permanent impairment of the right knee without any further elaboration. He noted that his dictation was attached to the correspondence. However, no documents accompanied his letter.

In a decision dated August 20, 2001, the Office granted appellant a schedule award for a two percent permanent impairment of the right leg.

The Board finds that appellant has no more than a two percent impairment of the right leg.

The schedule award provision of the Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

On appeal appellant alleges he is entitled to a 30 percent impairment of the right leg based on the calculations of his treating physician Dr. Dyer who determined that appellant sustained a 30 percent permanent impairment of the right leg.

In his report dated January 30, 2001, Dr. Dyer noted that appellant had reached maximum medical improvement with respect to both his knees. He indicated that appellant had approximately 30 percent permanent physical impairment of the right leg; loss of physical function to the right lower extremity as a whole as it related to the right knee as a result of the quad atrophy that damaged the right knee and the quad mechanism; with persistent defect; and persistent and recurrent pain in the right knee. However, Dr. Dyer did not make a determination on impairment in accordance with the A.M.A., *Guides* (5th ed. 2001). Although he noted that

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

appellant had a 30 percent permanent physical impairment of the right leg, he did not provide a numerical impairment rating in conformance with the A.M.A., *Guides*. Dr. Dyer neither referenced the A.M.A., *Guides* nor did he cite to tables or charts for an impairment rating determination. Thus, it was proper for the Office to refer the matter to its medical adviser.⁴

The medical adviser who reviewed Dr. Dyer's report correlated findings from Dr. Dyer's report to specific provisions in the A.M.A., *Guides*. The medical adviser noted that appellant sustained a partial medial meniscectomy which provided a two percent impairment rating according to Table 17-33, page 546 of the A.M.A., *Guides* (5th ed. 2001). Dr. Dyer provided no physical findings with either his January 30, 2001 or June 29, 2001 reports which would demonstrate that appellant sustained an impairment rating higher than the two percent granted by the medical adviser. The Office, in a letter dated June 26, 2001, requested that Dr. Dyer comment on the medical advisers calculations and advise of any additional factors which would provide a higher impairment rating for appellant. In a letter dated June 29, 2001, Dr. Dyer indicated that appellant sustained a 30 percent permanent impairment of the right knee. He neither referenced the A.M.A., *Guides* (5th ed. 2001) nor did he provide any explanation in support of his 30 percent permanent impairment rating for the right knee.

The Board therefore, finds that the Office medical adviser properly applied the A.M.A., *Guides* in finding that appellant had a two percent impairment of the right leg due to his employment-related condition.

The Board finds that the weight of the evidence rests with the calculations of the Office medical adviser. Appellant, is therefore, entitled to a schedule award for no more than two percent impairment for the right leg.⁵

⁴ It is well settled that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*. Board cases are clear that if an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

⁵ With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c). This does not preclude appellant from requesting reconsideration from the Office and submitting additional evidence in support of his claim.

The decision of the Office of Workers' Compensation Programs dated August 20, 2001 is hereby affirmed.

Dated, Washington, DC
August 27, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member