U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DERRICK C. MILLER and FEDERAL BUREAU OF PRISONS, FEDERAL CORRECTIONS INSTITUTE, Lompoc, CA

Docket No. 02-140; Submitted on the Record;
Issued December 23, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he has more than a seven percent permanent impairment of his right lower extremity for which he received a schedule award.

On July 20, 2000 appellant, then a 32-year-old assistant recreation supervisor, sustained a right knee sprain while engaging in physical training at work. On September 7, 2000 appellant underwent an arthroscopic-assisted anterior cruciate ligament reconstruction of his right knee which was authorized by the Office of Workers' Compensation Programs. By decision dated July 3, 2001, the Office granted appellant a schedule award for a seven percent permanent impairment of his right lower extremity. The Office based its award on the June 18, 2001 report of Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, who served as an Office medical consultant.

The Board finds that appellant did not meet his burden of proof to establish that he has more than a seven percent permanent impairment of his right lower extremity for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[2] including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[3] Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

permanent impairment of the scheduled member or function.[4] 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

In a report dated May 18, 2001, Dr. Michael D. Gill, an attending Board-certified orthopedic surgeon, diagnosed several right knee conditions -- status post anterior cruciate ligament reconstruction, complete tear of the right medial collateral ligament (healed), and sprains of the posterior cruciate and lateral collateral ligaments. Dr. Gill indicated that appellant could flex his right leg to 130 degrees, that he had a 2½-inch quadriceps atrophy on the right, and that there was only a slight opening in the medial compartment with a firm endpoint. He noted that appellant had mild tenderness in the right prepatellar region and that there was no significant joint line tenderness or intra-articular effusion.

In a report dated June 18, 2001, Dr. Harris, a Board-certified orthopedic surgeon, who served as an Office medical consultant, evaluated the findings of Dr. Gill and determined that appellant had a seven percent permanent impairment of his right lower extremity due to his employment-related right knee problems. Dr. Harris indicated that the findings showed appellant had mild laxity of the anterior cruciate ligament of his right knee and that, according to the A.M.A., *Guides*, this finding warranted a diagnosis-based impairment rating of seven percent. The Board finds that Dr. Harris properly applied the relevant standards of the A.M.A., *Guides* to arrive at this conclusion regarding the permanent impairment of appellant's right lower extremity.[6]

In his May 18, 2001 report, Dr. Gill did not provide any calculation of the permanent impairment of appellant's right lower extremity and he did not otherwise provide an assessment of appellant's permanent impairment which was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.[7] As the June 18, 2001 report of Dr. Harris provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[8] For these reasons, appellant

[4] 5 U.S.C. § 8107(a).

[5] 20 C.F.R. § 10.404 (1999).

[6] A.M.A., *Guides* 546, Table 17-33 (5th ed. 2001). When such a diagnosis-based impairment rating is applied, it is generally not appropriate to calculate additional impairment based on anatomic or functional based methods (such as limitations related to strength or range of motion). *Id.* at 525-37. Moreover, the findings did not show that appellant had significant limitations of strength or range of motion.

[7] *See James Kennedy, Jr.*, *supra* note 5 (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

[8] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

did not meet his burden of proof to establish that he has more than a seven percent permanent impairment of his right lower extremity for which he received a schedule award.

The July 3, 2001 decision of the Office of Workers' Compensation Programs is affirmed.[9]

Dated, Washington, DC
December 23, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] Appellant submitted additional evidence after the Office's July 3, 2001 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). The record also contains a September 10, 2001 Office decision, but this decision was issued after appellant filed this appeal before the Board and therefore the decision is not before the Board for review.