

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY THIEDIG and DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION, Little Rock, AR

*Docket No. 02-1458; Submitted on the Record;
Issued December 23, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to a greater than four percent impairment of his right lower extremity, for which he has received a schedule award.

On January 13, 1999 appellant, then a 27-year-old basic agent trainee, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee on January 12, 1999 during firearms training. The Office of Workers' Compensation Programs accepted the claim for right knee and leg sprain, right lesion of the medial femoral condyle and authorized right knee arthroscopy surgery.

In a December 8, 1999 report, Dr. J.L. Vander Schilden, an attending Board-certified orthopedic surgeon, concluded that appellant had a 20 percent impairment of his right leg "due to the large nature of his chondral defect and the potential for serious morbidity in the future."

Appellant filed a claim for a schedule award on April 10, 2000.

In a March 7, 2000 report, Dr. John A. Gragnani, a second opinion Board-certified physician in physical medicine and rehabilitation, concluded that appellant had a one percent impairment of his right lower extremity. In reaching his finding the physician found Tables 41 and 64 were inapplicable in the instant situation as appellant had a normal range of motion and Table 64 was not applicable as the surgical procedure appellant underwent was not referenced. Dr. Gragnani then stated:

"As a consequence, I then turned to Tables 20 and 21, page 151. From Table 21, full strength of Grade V was considered for 0 [degree] motor deficiency. From Table 20, Class III for sensory changes was considered with an estimated 40 percent sensory impairment times 2 percent for lower extremity due to the femoral nerve for sensory changes, which yields 0.8 percent, converted to 1 percent for the right lower extremity."

In a March 15, 2000 report, the Office medical adviser concurred with Dr. Gragnani's report that appellant had a one percent impairment of the right lower extremity.

By letter dated March 10, 2000, appellant disagreed with the impairment rating issued by Dr. Gragnani and submitted arguments as to why the impairment rating should be higher.

In a March 29, 2000 report, the Office medical adviser concluded that appellant had a four percent impairment. In reaching this determination, the Office medical adviser agreed with appellant that using Table 20, an estimated 40 percent sensory impairment times 7 percent for lower extremity due to dysesthesia of the femoral nerve, which yields 2.8 percent, converted to 3 percent for the right lower extremity. Thus, the three percent for dysesthesia plus the one percent for sensory change results in a four percent impairment of the right lower extremity.

On May 12, 2000 the Office issued appellant a schedule award for a four percent impairment of his right lower extremity.

Appellant's counsel disagreed with the May 12, 2000 decision and requested an oral hearing, which was held on October 26, 2000.

By decision dated January 30, 2001, the hearing representative affirmed the May 12, 2000 decision.

In a letter dated April 5, 2001, appellant requested reconsideration and submitted evidence in support of his request. Appellant contended that he was entitled to at least a 10 percent impairment rating for this chondral defect, which he considered as a meniscectomy. He also requested an impairment rating for the osteoarthritis in his right knee. The evidence included decisions by the Board, an article on osteoarthritis, clinic reports dated March 30, April 6 and May 7, 1999, by Dr. Vander Schilden and April 7, 1999 operation report for a right knee arthroscopy. The March 30 and April 7, 1999, operative reports noted a 3 x 5 mm chondral defect in the right medial femoral condyle.

In a report dated April 2, 2001, the Office medical adviser reviewed the evidence submitted by appellant. He noted that the Board decisions appellant referred to used the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The Office medical adviser noted that "The concept of Table 36 was not any longer operant once the [fourth] edition of the A.M.A., *Guides* was introduced [and] is not operant in the [fifth] edition of the A.M.A., *Guides*." In concluding, the Office medical adviser opined that appellant's impairment rating of four percent would be the same under the fifth edition of the A.M.A., *Guides* and thus no change in the award is warranted.

In an April 26, 2001 merit decision, the Office denied appellant's reconsideration request.

Appellant requested reconsideration in a letter dated August 1, 2001 and submitted arguments and evidence in support of his request. The evidence included pages from the A.M.A., *Guides*, a June 14, 1999 report by Dr. Vander Schilden and a note restricting appellant from no running more than 50 yards. In his June 14, 1999 report, Dr. Vander Schilden noted that appellant had a chondral defect of the right medial femoral condyle.

By September 12, 2001 nonmerit decision, the Office denied appellant's request for modification of his schedule award.

In a letter dated September 20, 2001, appellant requested reconsideration and referenced Table 64 page 85 and page 5, section 1.5 of the A.M.A., *Guides* to support his argument that he was entitled to a greater award.

In a January 25, 2002 report, the Office medical adviser reviewed the evidence and concluded that there was no evidence appellant was entitled to a greater schedule award for his right leg.

By merit decision dated January 28, 2002, the Office denied appellant's request for reconsideration.

The Board finds that appellant is not entitled to a greater than four percent impairment of his right lower extremity, for which he has received a schedule award.

Section 8107 of the Federal Employees' Compensation Act¹ provides that, if there is permanent disability involving the loss or loss of use of a specific enumerated member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² The Act does not specify the manner by which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

In determining the impairment rating, the Office medical adviser initially agreed with Dr. Gragnani that appellant had a one percent impairment due to sensory changes in the femoral nerve. This determination was based on Table 20, page 151, which noted that a Class III for sensory changes was considered with an estimated 40 percent sensory impairment. The 40 percent was then multiplied by 2 percent which yielded 0.8 percent. This was converted to one percent for the right lower extremity. Subsequently, in a March 29, 2000 report, the Office medical adviser concluded that appellant was entitled to an additional three percent impairment based upon pain. In reaching this determination, the Office medical adviser using Table 20 determined there was an estimated 40 percent sensory impairment which he multiplied by 7 percent for lower extremity due to dysesthesia of the femoral nerve, which yields 2.8 percent,

¹ 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8107.

² *Id.* This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ *Mary L. Henninger*, 52 ECAB ____ (Docket No. 00-552, issued June 20, 2001); 20 C.F.R. § 10.404 (1999). The Office first utilized *A Guide to the Evaluation of Permanent Impairment of the Extremities and Back*, published in the Journal of the American Medical Association, Special Edition, February 15, 1958. From 1958 until 1971 a series of 13 A.M.A., *Guides* was published in the Journal of the American Medical Association. The American Medical Association published the first hardbound compilation edition of the A.M.A., *Guides* in 1971, which revised the previous series of A.M.A., *Guides*.

converted to 3 percent for the right lower extremity. Thus, the 3 percent for dysesthesia plus the 1 percent for sensory change results in a four percent impairment of the right lower extremity.

The Office medical adviser used the fourth edition of the A.M.A., *Guides* to calculate appellant's permanent impairment. However, after February 1, 2001, the fifth edition of the A.M.A., *Guides* is to be used.⁴ As the Office medical adviser noted, there is no change from the fourth edition to the fifth edition in the tables he used to calculate appellant's permanent impairment.⁵ Also, appellant has not submitted medical evidence in accordance with the fifth edition of the A.M.A., *Guides* establishing that he has more than a four percent permanent impairment of his right lower extremity. Thus, the Board finds that the Office properly granted appellant a schedule award for this degree of impairment.

Appellant contends he is entitled to a greater amount based upon his osteoarthritis and his belief that his chondral defect is the same as a meniscectomy. A meniscectomy is defined as "an excision of a meniscus of the knee joint."⁶ The Board notes that the record contains evidence that appellant has a chondral defect, but there is no evidence that appellant had a meniscectomy. Thus, appellant is not entitled to an impairment rating for a meniscectomy. Regarding appellant's argument about his osteoarthritis, the A.M.A., *Guides* does provide for impairment ratings for arthritis based on loss of cartilage intervals found on x-ray.⁷ The record contains no x-ray findings of loss of cartilage intervals, therefore, he has not supported this impairment in accordance with the A.M.A., *Guides*

As appellant has not submitted medical evidence in accordance with the fifth edition of the A.M.A., *Guides* establishing that he has more than four percent permanent impairment of his right lower extremity, the Board finds that the Office properly granted appellant a schedule award for this degree of impairment.

⁴ FECA Bulletin 01-05 (issued January 29, 2001).

⁵ See A.M.A., *Guides*, page 151, Tables 20-21 (4th ed. 1993); page 532, Table 17-37 (5th ed. 2000).

⁶ *DORLAND'S ILLUSTRATED Medical Dictionary* 758 (27th ed. 1988).

⁷ See A.M.A., *Guides*, page 544, Table 17-31.

The January 28, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 23, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member