

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARK A. DENNEY and DEPARTMENT OF THE AIR FORCE,  
TACTICAL AIR COMMAND, HOLLOMAN AIR FORCE BASE, NM

*Docket No. 01-1426; Submitted on the Record;  
Issued February 13, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has greater than a 14 percent permanent impairment to his left lower extremity for which he received a schedule award.

The Board has duly reviewed the case record and concludes that appellant has no greater than a 14 percent permanent impairment to his left lower extremity.

The Office of Workers' Compensation Programs accepted appellant's claim for left shoulder impingement syndrome, left knee dislocation and a resulting arthroscopic surgery of the left knee.

In a report dated March 2, 2000, appellant's treating physician, Dr. Daniel C. Wascher, a Board-certified orthopedic surgeon, advised that appellant had undergone an arthroscopically assisted posterior cruciate ligament reconstruction on September 27, 1997 and was placed on maximum medical improvement after his visit of August 24, 1998. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1994), Table 64, page 85, Dr. Wascher found that appellant had a 14 percent impairment to his left lower extremity based on the degree of laxity of appellant's anterior and posterior cruciate ligament. He noted that appellant had a mild laxity of both the anterior and posterior cruciate ligament and each yielded a value of seven percent. Dr. Wascher utilized the Combined Values Chart of the two 7 percent figures to obtain a 14 percent permanent impairment to appellant's left lower extremity. Dr. Wascher stated that the impairment rating was diagnosis-based and that no subjective pain, discomfort, etc. was used to calculate the impairments.

In a noted dated April 16, 2000, the Office medical adviser reviewed Dr. Wascher's March 2, 2000 report and stated that appellant was entitled to a 14 percent lower extremity impairment rating. The Office medical adviser also stated that the figures Dr. Wascher obtained for appellant's left lower extremity, 7 percent for each anterior and posterior mild cruciate ligament laxity, and the method of using the Combined Values Chart of the A.M.A., *Guides* (4<sup>th</sup>

ed. 1994), page 323, to obtain a 14 percent permanent impairment of the left lower extremity was proper.

By decision dated May 5, 2000, the Office issued a schedule award for a 14 percent impairment to the left lower extremity payable for a total of 40.32 weeks of compensation.

Appellant requested an oral hearing before an Office hearing representative, which was held on November 30, 2000. At the hearing, appellant's attorney argued that the number of weeks of compensation awarded to appellant was insufficient and not appropriate.

By decision dated February 5, 2001, the Office hearing representative affirmed the Office's May 5, 2000 decision and modified it to reflect appellant's entitlement to an additional 3.36 weeks of compensation.<sup>1</sup>

The schedule award provisions of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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.<sup>4</sup>

In the instant case, the Office determined that appellant had a 14 percent permanent impairment of his left lower extremity by adopting the findings of the Office medical adviser, who determined the precise impairment rating by taking Dr. Wascher's determinations that appellant had a mild laxity of his anterior and posterior cruciate ligament at Table 64, page 85 of the A.M.A., *Guides* (4<sup>th</sup> ed. 1994) and applying those impairment ratings (7 percent for both the anterior and posterior cruciate ligament) to the Combined Values Chart, page 323, of the A.M.A., *Guides*.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 14 percent permanent impairment for loss of use of his left lower extremity, for which he has received a schedule award from the Office and that appellant has failed to provide probative, supportable medical evidence that he has greater than the 14 percent impairment already awarded.

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<sup>1</sup> The Office hearing representative found that the district Office had miscalculated the actual number of weeks of compensation due at 40.32 weeks as appellant was entitled to 43.68 weeks.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> See *Duane B. Harris*, 49 ECAB 170 (1997). The Board notes that, in this case, the Office based its February 5, 2001 decision on the fourth edition of the A.M.A., *Guides*. See FECA Bulletin 01-5 (issued January 29, 2001).

The February 5, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 13, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member