

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. MUIR and DEPARTMENT OF THE NAVY,
MARINE CORPS LOGISTICS BASE, Barstow, CA

*Docket No. 02-229; Submitted on the Record;
Issued July 1, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On August 11, 1999 appellant, then a 40-year-old tire repairman, filed an occupational disease claim, alleging that the tendinitis in his right knee resulted from the twisting and bending required in his work with heavy-duty tires. The Office of Workers' Compensation Programs accepted the claim for right quadriceps tendinitis and appellant underwent arthroscopy on January 3, 2000. Appellant returned to a light-duty position on February 28, 2000 and filed a schedule award claim.

In a July 14, 2000 report, Dr. Samuel H. Rice, a Board-certified orthopedic surgeon and appellant's treating physician, diagnosed symptomatic medial plica, postarthroscopy resection, and stated that appellant had a 10 degree loss of knee flexion and a 60 percent loss of his previous lifting capacity. Based on Dr. Rice's flexion measurements and report, the Office medical adviser found a four percent permanent impairment of appellant's lower right extremity.

On January 30, 2001 the Office issued a schedule award for a four percent impairment of appellant's right lower extremity. The award ran from July 14 to October 2, 2000. Appellant requested a written review of the record and on July 6, 2001 the hearing representative affirmed the four percent award.

The Board finds that appellant is entitled to no more than a four percent permanent impairment of his right lower extremity.

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions,

¹ 5 U.S.C. §§ 8101-8109.

and organs of the body.² 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.³ The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule award losses.⁴

The Board has held that a medical opinion not based on the appropriate edition of the A.M.A., *Guides* has little probative value in determining the extent of a claimant's permanent impairment.⁵ Because Dr. Rice failed to provide an impairment rating based on the use of the A.M.A., *Guides*, the Office properly requested that its medical adviser review Dr. Rice's report and determine a proper rating.⁶

The fourth edition of the A.M.A., *Guides* is applicable in this case.⁷ Section 3.2 states that three methods -- anatomic, diagnostic, and functional -- are used in evaluating permanent impairments of the lower extremity.⁸ Dr. Rice diagnosed medial plica, postarthroscopic resection and found a limited range of motion of the right knee of 0 to 125 degrees, without instability. The Office medical adviser properly found this measurement nonratable, according to Table 41, page 78, which notes 110 degrees.⁹

Noting that appellant had no impairment for muscle weakness or atrophy, the Office medical adviser found a Grade 3 pain/decreased sensation, which interfered with the function of the femoral nerve. Table 68 provides a maximum of seven percent impairment for pain involving the femoral nerve. This impairment was classified as Grade 3 or 60 percent under Table 11, resulting in a four percent impairment for pain.

² 5 U.S.C. § 8107.

³ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Carolyn E. Sellers*, 50 ECAB 393, 394 (1999).

⁶ See *Denise D. Cason*, 48 ECAB 530, 531 (1997) (finding that although appellant's physician found a greater impairment rating, he failed to explain the basis of his opinion, and the Office medical adviser properly applied the "[d]iagnosis [b]ased [e]stimates" in the fourth edition of the A.M.A., *Guides* to determine the correct percentage of impairment).

⁷ The fifth edition of the A.M.A., *Guides* became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*. In this case, the award was initially made on January 30, 2001, prior to the effective date.

⁸ A.M.A., *Guides* (4th ed.) at 75.

⁹ In his schedule award determination, the Office medical adviser did not state which edition of the A.M.A., *Guides* he used. However, his calculations indicate that he used the fourth edition.

The Board finds that the Office medical adviser properly applied the fourth edition of the A.M.A., *Guides* to the measurements and diagnosis provided by Dr. Rice.¹⁰ Appellant has provided no other medical evidence on the impairment of his knee. Inasmuch as the Office properly applied the fourth edition of the A.M.A., *Guides* to the medical evidence, appellant is entitled to no more than a four percent impairment of his right lower extremity.

The July 6 and January 30, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 1, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ See *Richard F. Kastan*, 48 ECAB 651 (1997) (finding that the Office medical adviser's report provided the only evaluation that conformed to the A.M.A., *Guides* and thus represented the weight of the evidence).