

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH MOSELY and DEPARTMENT OF THE ARMY,
FORT SAM, Houston, TX

*Docket No. 02-396; Submitted on the Record;
Issued June 25, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

Appellant, a 39-year-old motor vehicle operator, filed a notice of traumatic injury on May 19, 1999 alleging that on May 4, 1999 he sprained his right knee in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for strain right knee and authorized surgery. Appellant requested a schedule award and by decision dated October 15, 2001, the Office granted appellant a schedule award for five percent permanent impairment of his right lower extremity in the amount of \$5,275.44.

The Board finds that appellant has no more than five percent permanent impairment of his right lower extremity for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides*, 5th edition (2001).

In a report dated January 18, 2001, Dr. Michael P. Baker, a physician Board-certified in emergency medicine, examined appellant and provided his impairment rating. He found that appellant had a right lateral meniscus tear and subchondral cyst with no joint effusion, tenderness or loss of range of motion. Dr. Baker stated that appellant's right thigh measured 49 centimeters and that his left thigh measured 50 centimeters. He concluded that, in accordance with the fourth edition of the A.M.A., *Guides*, appellant had two percent impairment of his right lower extremity due to the partial meniscectomy and three percent impairment due to atrophy.

Appellant submitted a report dated April 30, 2001 from Dr. Brian E. Schulze, a Board-certified orthopedic surgeon, who stated that appellant had reached maximum medical improvement and applied the third edition of the A.M.A., *Guides*. He concluded that appellant had 5 percent impairment due to the partial meniscectomy and 10 percent impairment due to lateral compartment osteoarthritis. Dr. Schulze found that appellant had 15 percent impairment of his right lower extremity and 6 percent impairment to the whole person.⁴

The district medical director reviewed the medical evidence of record on June 30, 2001 and properly applied the fifth edition of the A.M.A., *Guides* to the findings. The fifth edition of the A.M.A., *Guides* provides that a partial meniscectomy is a two percent impairment of the lower extremity.⁵ The district medical director further found that one centimeter of thigh atrophy was three percent permanent impairment of the lower extremity.⁶ The A.M.A., *Guides* provide for impairment ratings for arthritis based on loss of cartilage intervals found on x-ray. In his April 30, 2001 report, Dr. Schulze did not base his finding of impairment on 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 five 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. The Board further notes that the Act provides that the loss of a leg entitles a claimant to 288 weeks of compensation. Appellant has 5 percent impairment of his leg entitling him to 5 percent of 288 weeks or 14.4 weeks of compensation, not 15.6 weeks as listed in the Office's October 15, 2001 decision. However, the Office properly found that appellant was entitled to \$5,275.44 or 14.4 weeks of compensation at the augmented rate of \$366.35.

⁴ The Board notes that the Act does not provide for schedule awards for impairment to the person as whole, but instead only to the listed scheduled members. 5 U.S.C. § 8107. Therefore, neither appellant nor either other party is entitled to a schedule award for impairment to the whole person.

⁵ A.M.A., *Guides*, 546, Table 17-33.

⁶ *Id.* at 530, Table 17-6.

The October 15, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 25, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member