

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT D. KERNS and DEPARTMENT OF THE TREASURY,
CUSTOMS SERVICE, Oatay Mesa, CA

*Docket No. 02-8; Submitted on the Record;
Issued May 21, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 27 percent permanent impairment of his left lower extremity, for which he received a schedule award.

Appellant's claim filed on December 8, 1998 was accepted for osteochondritis desiccans and internal derangement after he, then a 53-year-old canine enforcement officer, twisted his left knee while loading a dog into a kennel. Appellant stopped work, underwent arthroscopic surgery on March 2, 1999 and returned to full duty on April 26, 1999.

Subsequently, appellant underwent an osteochondral allograft procedure on June 24, 1999. The graft was slow in healing and, following the diagnosis of a meniscal tear in his left knee, which the Office of Workers' Compensation Programs accepted as work related, appellant had arthroscopic surgery to repair it. He returned to light duty on February 20, 2000 and to full duty the next month.

In an August 8, 2000 report, Dr. Thomas W. Harris, a Board-certified orthopedic surgeon, reviewed the medical records and his treatment of appellant. He stated that appellant's left knee condition was permanent and stationary and found an 18 percent impairment. The Office medical adviser reviewed Dr. Harris' report and concluded that appellant had a nine percent permanent impairment of his left lower extremity.

By decision dated July 18, 2001, the Office issued a schedule award for a nine percent impairment of appellant's left knee, amounting to \$16,521.15. He requested reconsideration and submitted an August 3, 2001 report by Dr. Harris, who found an additional 25 percent impairment, based on cartilage defect in the left knee.

The Office medical adviser reviewed Dr. Harris' later report and concluded that appellant had sustained an additional 18 percent impairment of the left lower extremity. By decision dated

September 6, 2001, the Office modified its prior decision and awarded an additional 18 percent impairment for a total rating of 27 percent.

The Board finds that appellant is entitled to no more than a 27 percent permanent impairment of his left lower extremity, for which he received a schedule award.

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 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 (A.M.A.), *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule award losses.⁴

In this case, appellant reached maximum medical improvement on June 6, 2000, according to his treating surgeon, Dr. William D. Bugbee, a clinical professor of orthopedics. On August 8, 2000 Dr. Harris rated appellant's condition according to the fourth edition of the A.M.A., *Guides*, finding a 10 percent disability for a Grade II chondromalacia of the patella, a 7 percent disability for "mostly Grade III and Grade II" chondromalacia of the lateral femoral condyle and a 2 percent disability for the medial meniscectomy. Using the Combined Values Chart, Dr. Harris determined a total of 18 percent permanent impairment.

However, this report was not received by the Office until February 21, 2001, after the effective date of the fifth edition of the A.M.A., *Guides*.⁵ Accordingly, the Office medical adviser reviewed the medical evidence and used the fifth edition of the A.M.A., *Guides* to calculate only a nine percent impairment, which was based on a seven percent impairment for residual mild degenerative joint disease of the knee and on two percent impairment for a medial meniscectomy.

On reconsideration, appellant submitted an August 3, 2001 report by Dr. Harris, who found that x-rays of appellant's left lower extremity showed only a one-millimeter cartilage interval in the medial compartment of his left knee. Again using the fourth edition of the A.M.A., *Guides*, Dr. Harris found a 25 percent impairment (see Table 62, page 83), which, he stated, should be added to the previous 18 percent for a total 43 percent impairment rating.

¹ 5 U.S.C. §§ 8101-8109.

² 5 U.S.C. § 8107.

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

⁴ 20 C.F.R. § 10.404 (1999).

⁵ 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*, even if the amount of the award was calculated prior to that date.

Reviewing Dr. Harris' report and using the fifth edition of the A.M.A., *Guides*, a second Office medical adviser calculated an additional 18 percent impairment, based on 25 percent for the 1 millimeter cartilage interval plus 2 percent for the partial meniscectomy minus the 9 percent previously awarded.

The Board finds that the Office's medical advisers properly applied the fifth edition of the A.M.A., *Guides* to the diagnoses provided by Dr. Harris. FECA Bulletin No. 01-05 explains that the fifth edition of the A.M.A., *Guides* specifies when different evaluation methods of calculating impairment of the lower extremities should be used and which methods can be used in combination. This departure from the fourth edition's use of the Combined Values Chart renders Dr. Harris' calculations of 18 and 25 percent impairment erroneous.⁶

Thus, the Office medical adviser reviewed arthroscopic findings from the operative reports dated February 7, 2000 and March 2, 1999 and used Table 17-33, page 546 to find a 2 percent rating for the meniscectomy and Table 17-31, page 544 to find a 7 percent rating for post-traumatic arthritis for a 9 percent total impairment. Similarly, the Office medical adviser reviewed Dr. Harris' August 3, 2001 report and used Table 17-31 to find a 25 percent impairment, which combined with the 2 percent meniscectomy rating, totaled a 27 percent impairment of the left lower extremity.

Inasmuch as the Office properly applied the fifth edition of the A.M.A., *Guides* to the medical evidence, appellant is entitled to no more than a 27 percent permanent impairment of his left lower extremity.

The September 6 and July 18, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
May 21, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ The grade impairments for chondromalacia as noted by Dr. Harris are not found in the fifth edition of the A.M.A., *Guides*.