

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDDIE L. SMITH and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, St. Louis, MO

*Docket No. 02-1005; Submitted on the Record;
Issued November 5, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

This is the second appeal before the Board in this case. By decision dated June 25, 1999,¹ the Board set aside the Office of Workers' Compensation Programs' August 14, 1997 decision denying appellant's June 26, 1997 recurrence claim of disability. The Board found that reports from Dr. Jerome F. Levy, a Board-certified surgeon, and Dr. Philip P. George, a Board-certified orthopedic surgeon, were sufficient to warrant further development. The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

On June 14, 2000 appellant filed a claim for a greater schedule award for permanent impairment based on his accepted anterior cruciate ligament tear. He submitted a report dated July 3, 2000 from Dr. James C. Strickland, his treating Board-certified orthopedic surgeon, who found that appellant had reached maximum medical improvement and assigned a 15 percent right knee impairment rating due to the "chondral fracture of the medial femoral condyle." Dr. Strickland also rated appellant for a 50 percent impairment due to "the preexisting chondromalacia and lateral patellar tracking" related to the original 1981 injury.

In a December 7, 2000 report, Dr. John A. Gragnani, a second opinion physician Board-certified in physical medicine, rehabilitation and occupational medicine, concluded that appellant had a one percent impairment of his right lower extremity. In support of this conclusion, he noted:

"Utilizing [t]he [American Medical Association], Guides to the Evaluation of Permanent Impairment fourth edition, from Table 41, page 78, range of motion

¹ Docket No. 97-1907. This was assigned claim number 11-0138964. The Board notes that appellant received a schedule award for five percent impairment of his right lower extremity on June 6, 1985 based on his November 13, 1981 injury, accepted for an anterior cruciate ligament tear.

was reviewed. [Appellant's] flexion was greater than 110 degrees. He had 0 degrees of extension with a normal valgus position. Therefore, no rating from the range of motion table, page 78, was provided. Turning to page 151, Tables 20 and 21, [appellant's] strength was demonstrated, both actively and on manual testing, to be Grade V, which would give him a 0 percent motor deficit. On sensory and pain evaluation, Table 20, Class III was suggested for reported pain with a level believed to be at 30 percent sensory impairment by this examiner. This 30 percent is multiplied by 2 percent for lower extremity for the femoral nerve from Table 68, page 89. This yielded a 0.6 percent sensory deficit impairment for the right lower extremity. This is rounded off to 1 percent."

In a report dated December 22, 2000, the Office medical adviser agreed with Dr. Gragnani that appellant had no more than a one percent impairment of his right lower extremity using the fourth edition of the A.M.A., *Guides*.

By decision dated April 23, 2001, the Office denied appellant's request for an increased impairment rating for his right lower extremity. The Office relied upon the reports of Dr. Gragnani and the Office medical adviser who concluded that appellant had no more than a one percent impairment of his right lower extremity.

Appellant requested a hearing by letter dated May 3, 2001. A hearing was held on November 1, 2001.

By decision dated December 19, 2001, the hearing representative affirmed the April 23, 2001 decision denying appellant's request for an increased schedule award for his right lower extremity.

The Board finds that appellant has no more than a five percent impairment of his right lower extremity.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ 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*⁴ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, Dr. Strickland's July 3, 2000 opinion that appellant had 15 percent right knee impairment due to the "chondral fracture of the medial femoral condyle" and a 50 percent impairment due to "the preexisting chondromalacia and lateral patellar tracking" is not probative

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ A.M.A., *Guides*, (5th ed. 2001).

because he did not explain his use of the A.M.A., *Guides* in reaching his conclusion. It is well settled that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant based on the A.M.A., *Guides*. If an attending physician does not use the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment.⁵

The Board notes that the schedule award was issued based on the A.M.A., *Guides* (4th ed. 1994). However, the A.M.A., *Guides* (5th ed. 1995) became effective February 1, 2001⁶ and, therefore, the Office should have used the fifth edition of the A.M.A., *Guides* in determining appellant's entitlement to a schedule award. This error is harmless because appellant's impairment rating is the same when calculated under the fifth edition of the A.M.A., *Guides*.

In his December 7, 2000 report, Dr. Gragnani found that appellant had flexion greater than 110 degrees, a normal extension from the valgus position, a Grade V for strength and a Class III for pain. Stating that he used the A.M.A., *Guides* to determine that appellant's flexion of greater 110 degrees and normal extension from the valgus position resulted in a 0 percent impairment. The physician concluded that appellant had a one percent impairment of his right lower extremity due to his sensory deficit impairment. The Office medical adviser reviewed Dr. Gragnani's report and concurred with his impairment determination. His evaluation applied Table 41 at page 78, Table 68 at page 89 and Tables 20 and 21 at page 151 of the fourth edition which corresponds with Table 17-10, Table 17-37, Table 16-10 and Table 16-11, in the A.M.A., *Guides* (5th ed. 1995). The reports of Dr. Gragnani and the Office medical adviser are proper and constitute the weight of the medical evidence.

⁵ See *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993); *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁶ FECA Bulletin No. 01-05 (issued January 29, 2001).

The December 19, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁷

Dated, Washington, DC
November 5, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ The Board notes that appellant's appeal to the Board was accompanied by new evidence. The Board's jurisdiction on appeal is limited to a review of the evidence, which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence. Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b) (1999).