

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDWARD L. PERALES and U.S. POSTAL SERVICE,  
PORTAIRS POST OFFICE, Corpus Christi, TX

*Docket No. 02-358; Submitted on the Record;  
Issued October 28, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 20 percent permanent impairment of the left lower extremity for which he received a schedule award.

On June 10, 1998 appellant, then a 58-year-old customer service manager, sustained an employment-related left knee sprain for which he underwent a partial patellectomy on March 12, 1999.<sup>1</sup> In January 1998 appellant had undergone a nonemployment-related partial medial meniscectomy on the left. On July 1, 1999 he filed a schedule award claim. By decision dated April 18, 2000, the Office of Workers' Compensation Programs granted appellant a schedule award for a 20 percent permanent impairment for partial loss of use of the left lower extremity for a total of 57.60 weeks of compensation to run from June 29, 1999 to August 6, 2000.<sup>2</sup>

Following appellant's timely request, a hearing was held on October 24, 2000. At the hearing he testified regarding his condition and advised that he had retired on November 3, 1998. Appellant further submitted a report from his treating Board-certified orthopedic surgeon, Dr. John D. McKeever. By decision dated January 4, 2001 and finalized January 22, 2001, an Office hearing representative affirmed the prior decision. On July 25, 2001 appellant requested reconsideration and submitted a July 24, 2001 report from Dr. McKeever. In a September 25, 2001 decision, the Office denied modification of its prior schedule award decision. The instant appeal follows.

The Board finds this case is not in posture for decision.

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<sup>1</sup> While the statement of accepted facts provides that appellant underwent a total patellectomy, the medical evidence indicates that he underwent a partial patellectomy.

<sup>2</sup> At the time of the April 18, 2000 schedule award, the Office utilized the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993); A.M.A., *Guides see John Yera*, 48 ECAB 243 (1996).

Under section 8107 of the Federal Employees' Compensation Act<sup>3</sup> and section 10.404 of the implementing federal regulations,<sup>4</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*<sup>5</sup> has been adopted by the Office and the Board has concurred in such adoption as an appropriate standard for evaluating schedule losses.<sup>6</sup> Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is utilized to calculate any awards.<sup>7</sup>

The relevant medical evidence includes a form report dated July 28, 1998 in which Dr. McKeever advised that, under the third edition of the A.M.A., *Guides*, appellant was entitled to a 15 percent whole body impairment. In a report dated November 22, 1999, Dr. McKeever evaluated appellant and advised that he was entitled to a 10 percent impairment due to loss of extension power, a 10 percent impairment due to the January 1998 meniscectomy and a 10 percent impairment due to grade II chondromalacia which totaled a 30 percent impairment of the left knee.

In a report dated March 7, 2000, an Office medical adviser, Dr. R. Meador, who is Board-certified in internal medicine, utilized the diagnosis-based estimates found in Table 64, page 85, of the fourth edition of the A.M.A., *Guides* and advised that appellant was entitled to a two percent impairment for the partial meniscectomy and a seven percent impairment for the partial patellectomy. He further found that under Table 39, page 77, appellant exhibited a Grade 4 knee extension weakness which was equal to a 12 percent impairment. Under the Combined Values Chart of the A.M.A., *Guides*, the Office medical adviser combined the 9 percent diagnosis-based impairment and the 12 percent impairment due to muscle weakness, finding that appellant was entitled to a 20 percent permanent impairment of the left lower extremity.

By report dated November 20, 2000, an Office medical consultant, Dr. Neven A. Popovic, who is Board-certified in orthopedic surgery, advised that, because appellant's partial meniscectomy was not employment related, surgery for that condition should not be included in his impairment rating. He continued that Dr. McKeever's findings supported a 12 percent impairment for extensor weakness but he was unable to find a medical basis to indicate that appellant's chondromalacia was employment related. Dr. Popovic concluded that appellant was entitled to a 7 percent impairment for the partial patellectomy and a 12 percent impairment for

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB \_\_\_\_ (Docket No. 01-1361, issued February 4, 2002).

<sup>6</sup> See *Joseph Lawrence, Jr.*, *supra* note 5; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>7</sup> FECA Bulletin No. 01-05 (issued January 29, 2001).

the extensor weakness which, under the Combined Values Chart of the A.M.A., *Guides*, provided an 18 percent impairment.

By report dated July 24, 2001, Dr. McKeever contended that the meniscectomy was work related and should be included in the impairment rating. He further advised that appellant's chondromalacia of the patella produced the extensor weakness and again concluded that appellant was entitled to a 30 percent impairment rating.

When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a) of the Act,<sup>8</sup> to resolve the conflict in the medical opinion. In this case, appellant's physician, Dr. McKeever, provided findings on examination that would indicate that appellant was entitled to a greater schedule award due to second degree chondromalacia of the medial femoral condyle and patellofemoral joint. Dr. Popovic, who served as an Office medical consultant, disagreed with this finding. The Board therefore finds that a conflict in the medical opinion exists regarding the degree of appellant's knee impairment. It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.<sup>9</sup> In this case, appellant had a preexisting knee condition that required meniscectomy. The Board notes that, while under the fifth edition of the A.M.A., *Guides*, there is no specific rating for chondromalacia *per se*, a medical determination is needed to evaluate this condition and any appropriate impairment therefrom.

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an impartial evaluation pursuant to section 8123(a) regarding the extent of the permanent impairment of appellant's left lower extremity.<sup>10</sup> After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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<sup>8</sup> 5 U.S.C. § 8123(a).

<sup>9</sup> *Walter R. Malena*, 46 ECAB 983 (1995).

<sup>10</sup> *See* 20 C.F.R. § 10.408; *Debra S. Judkins*, 41 ECAB 616 (1990).

The decisions of the Office of Workers' Compensation Programs dated September 25 and January 4, 2001 are hereby set aside and the case is remanded to the Office for proceedings consistent with this decision.

Dated, Washington, DC  
October 28, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member