

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. COHEN and DEPARTMENT OF LABOR,
EMPLOYMENT STANDARDS ADMINISTRATION, Fairfax, VA

*Docket No. 02-1040; Submitted on the Record;
Issued October 28, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a 10 percent permanent impairment of his left lower extremity for which he received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant sustained no more than a 10 percent permanent impairment of his left lower extremity.

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.

On May 18, 2000 appellant, then a 38-year-old claims examiner filed a traumatic injury claim alleging that on May 17, 2000 he slipped and injured his left knee while in the performance of duty. On August 21, 2000 the Office of Workers' Compensation Programs accepted the claim for effusion and authorized arthroscopy of the left knee performed August 25, 2000.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides* (5th ed. 2001).

In an August 15, 2001 worksheet, appellant's physician, Dr. Gordon Avery, a Board-certified orthopedic surgeon, provided a disability evaluation for appellant regarding his left knee condition. He indicated that appellant would reach maximum medical improvement on August 25, 2001, the date of the authorized arthroscopy. Dr. Avery further noted that appellant had chronic pain, a range of motion of 140 degrees on the left as opposed to 150 degrees on the right and that appellant had Grade III and IV chondromalacial changes. He concluded in the worksheet that appellant had a 14 percent permanent impairment of the left leg. In an August 15, 2001 report, Dr. Avery reported that appellant lacked 10 degrees of flexion on the left, had a small effusion and had some minimal patellofemoral and medial joint line tenderness and pain with strenuous activities. He reiterated that appellant had a 14 percent impairment of the left lower extremity.

In an October 10, 2001 report, an Office medical adviser reviewed Dr. Avery's reports and noted that he failed to report any examination findings except range of motion and tables utilized to offer his rating, therefore, his impairment rating could not be accepted for schedule award purposes.

The Office referred appellant for a second opinion evaluation with Dr. Sheima Baig, a Board-certified physician in physical medicine and rehabilitation for determination of appellant's lower extremity impairment according to the A.M.A., *Guides*. He, in a November 14, 2001 report, reviewed appellant's history of injury and noted that Dr. Avery performed a diagnostic operative arthroscopy of appellant's left knee with a postdiagnosis of operative arthroscopy and chondroplasty and flexion contracture of the left knee. Dr. Baig diagnosed chondromalacia patella and tibia and reported that appellant had at that time reached maximum medical improvement. He further noted that x-rays of the knee taken during her examination revealed a cartridge measurement of four millimeter bilaterally. On examination, Dr. Baig found that appellant complained of pain, had tenderness over the medial joint line, no tenderness over the lateral joint, no effusion in the knee joint and no valgus and varus instability. He reported appellant's range of motion; stating that on the left appellant had a flexion of 90 degrees and extension of 0 degrees and on the right, a flexion of 120 degrees and 0 degrees on the right. Dr. Baig found that based on arthritis criteria on page 544, Table 17-31 of the A.M.A., *Guides* appellant had a zero permanent impairment. He further found that based on range of motion criteria on page 537, Table 17-10 of the A.M.A., *Guides*, appellant had a 10 percent permanent impairment of the left lower extremity.

The Office medical adviser reviewed Dr. Baig's November 14, 2001 report and found that her impairment rating of 10 percent of the left lower extremity was acceptable based on the applicable tables of the A.M.A., *Guides*.

By decision dated December 11, 2001, the Office granted appellant a schedule award for a 10 percent permanent impairment of his left lower extremity. The award covered 28.8 weeks.

On appeal, appellant requests review of the December 11, 2000 reward, arguing that he is entitled to an additional award totaling a 14 percent permanent impairment of his left lower extremity as indicated by his personal physician, a Board-certified orthopedic surgeon.

The Board finds that the opinion of Dr. Avery is of limited probative value. He failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.⁴ Although Dr. Avery stated that he applied the A.M.A., *Guides* in making his impairment determination, he did not explain, with specific reference to the tables and figures in the A.M.A., *Guides*, exactly how he determined the 14 percent impairment rating. Furthermore, Dr. Avery provided his impairment rating prior to the arthroscopy procedure.

Dr. Baig's November 14, 2001 report provided the only evaluation, which conformed to the A.M.A., *Guides* and thus constitutes the weight of the medical evidence.⁵ His clinical findings reflect that appellant had a flexion contracture of the left knee. The Board notes that according to the fifth edition of the A.M.A., *Guides*, impairments of individuals with knee flexion contractures should be determined by utilizing the range of motion method as opposed to x-rays.⁶ Dr. Baig's second opinion report, noted that with regard to range of motion, appellant had less than 110 degree flexion on the left and thus assigned him an impairment rating of 10 percent of the left lower extremity.⁷ There is no medical evidence of record, based upon correct application of the A.M.A., *Guides*, establishing that appellant has more than a 10 percent permanent impairment of the left lower extremity.

Accordingly, appellant has failed to provide any probative medical evidence that he has greater than a 10 percent impairment of the left lower extremity.

⁴ See *James Kennedy, Jr.*, 40 ECAB 620, 627 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

⁵ See *Michael C. Norman*, 42 ECAB 768 (1991).

⁶ A.M.A., *Guides*, page 544 (5th ed. 2001).

⁷ A.M.A., *Guides*, Table 17-10, p. 537 (5th ed. 2001).

The December 11, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 28, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member