

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SCOTT L. NORTON and DEPARTMENT OF THE ARMY,
MILITARY POLICE, Fort Leonard Wood, MO

*Docket No. 02-1486; Submitted on the Record;
Issued October 25, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

Appellant, a 54-year-old museum curator, injured his left knee on January 5, 2000 while moving panels in a warehouse. He filed a claim for benefits on the date of injury, which was accepted by the Office on February 3, 2000 for left knee strain.

On March 9, 2000 Dr. Jeffrey C. Davis, Board-certified in orthopedic surgery, performed arthroscopic surgery to repair appellant's medial meniscus and anterior cruciate ligament in his left knee.

On August 3, 2000 appellant filed a CA-7 claim for a schedule award based on the partial loss of use of his left lower extremity, stemming from his accepted January 5, 2000 employment injury.

On August 24, 2000 the Office referred appellant to Dr. John A. Gragnani, a Board-certified orthopedic surgeon, for an impairment evaluation to determine whether he had sustained any permanent impairment resulting from his accepted January 5, 2000 left knee injury.

On September 13, 2000 Dr. Gragnani, appellant's treating physician, submitted a report and impairment evaluation. He found that appellant had a nine percent impairment of his left knee based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition). Dr. Gragnani stated that he relied on Table 64 at page 85, deriving a 2 percent impairment of the left lower extremity based on a partial medial meniscectomy and a 7 percent impairment derived from a mild cruciate ligament laxity. Based on the Combined Values Chart at page 322, Dr. Gragnani calculated a nine percent lower extremity resulting from appellant's January 5, 2000 employment injury.

In a memorandum/impairment worksheet dated September 21, 2000, an Office medical adviser determined that appellant had a nine percent impairment of the left lower extremity, adopting Dr. Gragnani's findings which combined a two percent impairment of the left lower extremity based on a partial medial meniscectomy and a seven percent impairment derived from a mild cruciate ligament laxity, pursuant to Table 64 at page 85 of the A.M.A., *Guides*.

By decision dated November 2, 2000, the Office granted appellant a schedule award for a nine percent permanent impairment of the left lower extremity for the period from July 24, 2000 to January 21, 2001 for a total of 25.92 weeks of compensation.

By letter dated September 28, 2002, appellant requested reconsideration. He submitted a February 13, 2001 report from Dr. Davis, who noted that appellant had undergone left knee arthroscopy with partial medial meniscectomy and partial anterior cruciate ligament debridement and chondroplasty of the medial femoral condyle and trochlea on March 9, 2000. Appellant further noted that he had seen appellant for follow-up appointments on March 20 and April 3, 2000, and that he had returned to work with restrictions on April 4, 2000.

By decision dated February 4, 2002, the Office denied modification of the November 2, 2000 schedule award decision.

The Board finds that appellant has no more than a nine percent permanent impairment for loss of use of the left lower extremity, for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fourth edition) as the standard to be used for evaluating schedule losses.³

In this case, the Office determined that appellant had a nine percent permanent impairment of his left lower extremity based on Dr. Gragnani's findings, which provide two percent impairments for a partial meniscectomy of the left knee and seven percent impairment for a mild cruciate ligament laxity of the left knee. The Office medical adviser then applied this finding to the applicable table of the A.M.A., *Guides* to arrive at the nine percentage of impairment in appellant's left lower extremity.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a nine percent permanent impairment for loss of use of his left lower extremity, for which he has received a schedule award from the

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

Office and that appellant has failed to provide probative, supportable medical evidence that he has greater than the nine percent impairment already awarded.

The decision of the Office of Workers' Compensation Programs dated February 4, 2002 is hereby affirmed.

Dated, Washington, DC
October 25, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member