

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRED L. MORRIS and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, WI

*Docket No. 03-2247; Submitted on the Record;
Issued December 1, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

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

The Office of Workers' Compensation Programs accepted appellant's claim for right medial meniscus tear with arthroscopic surgery. On October 23, 2002 appellant filed a claim for a schedule award.

In a report dated March 1, 2001, appellant's treating physician, Dr. Todd M. Swenson, a Board-certified orthopedic surgeon, stated that appellant had increased pain and had been unable to work the prior three days because of a slip he had on the weekend where he went into a hyperflexed position on the right knee. He found that appellant had no effusion, his range of motion was 0 to 135 degrees of flexion, had a "very" mild tenderness on the lateral joint line, and had good ligamentous stability. Dr. Swenson stated that appellant continued to experience discomfort when attempting to go into a squatting or kneeling-type position. He opined that appellant had a seven percent permanent impairment related to his torn meniscus as well as articular cartilage defect in the lateral femoral condyle. Dr. Swenson did not discuss his impairment rating in terms of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In a report dated November 22, 2002, Dr. Swenson stated that appellant had reached maximum medical improvement as of March 1, 2001 and opined that appellant had a seven percent impairment to his knee based on impairments of two percent for partial meniscectomy, three percent for articular cartilage defect/injury lateral femoral condyle and two percent for residual pain. He stated that appellant's subjective complaints were pain with prolonged weight bearing or when in a flexed weight-bearing position (kneeling or squatting).

The Office referred the case record to Dr. David Anderson, an Office medical adviser, who reviewed Dr. Swenson's physical findings in a March 1, 2001 report. He stated that, according to the A.M.A., *Guides* (5th ed. 2001), Grade 3, Table 16-10, page 482, appellant had a

Grade 3 (50 percent sensory deficit) for continued pain. Dr. Anderson stated that, pursuant to Table 17-37, page 552, appellant's maximum lower extremity impairment due to pain in the distribution of the femoral nerve was two percent, and therefore appellant had a one percent lower extremity permanent impairment for pain. He stated that, pursuant to Table 17-33, page 546, appellant had a two percent lower extremity permanent impairment for the partial medial meniscectomy. The district medical adviser noted that the A.M.A., *Guides* (5th ed. 2001) do not provide for impairment based on arthroscopic findings of arthritis or articular cartilage defects. He stated that section 17.2h allows for impairment based on radiographically-determined cartilage intervals, but there was no record of this interval in the chart. Using the Combined Values Chart, page 604, Dr. Anderson determined that appellant had a total of three percent impairment for his right lower extremity.

By decision dated March 24, 2003, the Office granted appellant a schedule award for a three percent impairment to the right lower extremity for the period March 1 to April 30, 2001.¹

By letter dated April 17, 2003, appellant requested a written review of the record. Appellant resubmitted Dr. Swenson's November 22, 2002 report and an attending physician's report dated October 21, 2002 indicating that appellant required permanent work restrictions.

The Board finds that appellant has no more than a three percent impairment of the right lower extremity for which he received a schedule award.

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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

Dr. Swenson's November 22, 2002 report in which he opined that appellant had a seven percent impairment to his knee based on two percent for partial meniscectomy, three percent for articular cartilage defect/injury lateral femoral condyle and two percent for residual pain is of diminished probative value because Dr. Swenson did not explain how he applied the A.M.A., *Guides* (5th ed. 2001) in making his estimate of impairment.⁵

¹ Despite the issuance of the Office's decision dated March 12, 2002 in which the Office terminated appellant's compensation benefits effective March 4, 2002 for failure to accept suitable work and therefore applied 5 U.S.C. § 8106(2), it was proper for the Office to issue a schedule award since the award covered the time period prior to the termination of benefits. See *Stephen R. Lubin*, 43 ECAB 564, 573 (1992).

² 5 U.S.C. § 8107 *et seq.*

³ 20 C.F.R. § 10.404.

⁴ See *id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

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

In a March 8, 2003 report, Dr. Anderson, an Office medical adviser, determined that, pursuant to the A.M.A., *Guides* (5th ed. 2001), Table 16-10, page 482, appellant had a Grade 3 (50 percent sensory deficit). He stated that, pursuant to Table 17-37, page 552, the A.M.A., *Guides* allowed for a maximum lower extremity impairment due to pain in the distribution of the femoral nerve of two percent. Dr. Anderson then multiplied 2 percent by 50 percent to obtain a 1 percent impairment for pain.⁶ He correctly determined that, pursuant to Table 17-33, page 546, appellant had a 2 percent impairment for a medial meniscectomy. Further, the Office medical adviser was correct in noting that the A.M.A., *Guides* do not provide for impairment based on arthroscopic findings of arthritis or articular cartilage defects and there are no radiographically-determined cartilage intervals of record to measure an impairment under section 17.2h or Table 17-31, page 544. He correctly combined the one percent impairment of pain with the two percent impairment for the partial medial meniscectomy under the Combine Values Chart, page 604, to obtain a total impairment of three percent for appellant's right lower extremity. Appellant has not submitted sufficient evidence showing that he has greater than a three percent impairment to his left lower extremity.

The March 24, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 1, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ In accordance with section 17.21, page 550, the district medical adviser should first determine the injured nerve pursuant to Table 17-37, and then use Table 16-10 to determine the sensory deficit. Although the district medical adviser did the evaluation in reverse order, the result is the same.