

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of RICHARD D. PHIPPS and DEPARTMENT OF THE NAVY,  
NAVY PUBLIC WORKS CENTER, Philadelphia, PA

*Docket No. 02-2366; Submitted on the Record;  
Issued February 6, 2003*

---

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he has more than a 19 percent impairment of his left leg, for which he received a schedule award.

On January 31, 2001 appellant, then a 50-year-old mason, filed an occupational injury claim alleging that he sustained a left knee condition due to climbing stairs and working in awkward positions. The Office of Workers' Compensation Programs accepted that appellant sustained a torn medial meniscus of his left knee. The Office authorized left knee surgery, including medial meniscectomy, chondroplasty of the tibia and patella and synovectomy, which was performed on June 5, 2001 by Dr. John P. Salvo, an attending Board-certified orthopedic surgeon.<sup>1</sup> In late July 2001, he indicated that appellant could return to his regular work except for duties which required kneeling, squatting and working on ladders and scaffolds. By late September 2001, he had returned to his regular work.

The Office had previously accepted that appellant sustained an injury to his left knee in 1989. In connection with that claim, appellant received a schedule award on August 20, 1991 for a 19 percent permanent impairment of his left leg.<sup>2</sup> Appellant claimed that his 2001 employment injury increased the impairment of his left leg such that he was entitled to a schedule award which was greater than the award he received in 1991 for a 19 percent impairment of his left leg. In support of his claim, appellant submitted an April 30, 2002 report of Dr. Salvo. By decision dated July 26, 2002, the Office denied appellant's claim on the grounds that he did not meet his burden of proof to establish that he has more than a 19 percent permanent impairment of his left leg, for which he received a schedule award.

The Board finds that appellant did not meet his burden of proof to establish that he has more than a 19 percent impairment of his left leg, for which he received a schedule award.

---

<sup>1</sup> The file number for this claim is 03-0257577.

<sup>2</sup> The file number for this claim is 03-0145469.

An employee seeking compensation under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,<sup>4</sup> including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.<sup>5</sup> The schedule award provision of the Act<sup>6</sup> and its implementing regulation<sup>7</sup> 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>8</sup>

In the present case, appellant claimed that the 2001 employment injury to his left knee, a torn medial meniscus, increased the permanent impairment of his left leg such that he was entitled to a schedule award which was greater than the award he received in 1991 for a 19 percent impairment of his left leg. In support of this claim, appellant submitted an April 30, 2002 report of Dr. Salvo, an attending Board-certified orthopedic surgeon.

In his report, Dr. Salvo described his treatment of appellant's left knee condition since early 2001. He noted that when he last saw appellant on September 26, 2001 he was doing his regular work and indicated that he "had some small deficits of motion and strength, but was at a functional level." Dr. Salvo stated that appellant had no effusion or tenderness. He noted that, "considering the torn meniscus and the degenerative arthritis present in the knee," appellant had a 12 percent impairment of his left leg under the standards of the A.M.A., *Guides*. Dr. Salvo indicated that appellant's left knee condition was directly and causally related to the employment injury.

Given that Dr. Salvo concluded appellant had a 12 percent impairment of his left leg, the submission of his report does not show that appellant is entitled to a schedule award which is greater than the award he received in 1991 for a 19 percent impairment of his left leg.<sup>9</sup> Moreover, it is not clear how his calculation of permanent impairment was devised in accord

---

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404 (1999).

<sup>8</sup> *Id.*

<sup>9</sup> Appellant alleged that Dr. Salvo indicated in his April 30, 2002 report that he was entitled to a schedule award for a 12 percent impairment in addition to the schedule award he received for a 19 percent impairment. However, a plain reading of Dr. Salvo's report does not support this assertion.

with the relevant standard of the A.M.A., *Guides*.<sup>10</sup> For example, Dr. Salvo suggested that appellant had impairment due to loss of strength and motion, but he did not provide specific findings of such loss or apply specific findings to the relevant standards of the A.M.A., *Guides*.<sup>11</sup> Moreover, in a report dated June 12, 2002, a district medical adviser concluded that his opinion did not show that appellant has more than a 19 percent impairment of his left leg. The Board has reviewed the April 30, 2002 report of Dr. Salvo, as well as other medical reports of record and concluded that appellant was entitled to no more than a 19 percent impairment of his left leg.

The decision of the Office of Workers' Compensation Programs dated July 26, 2002 is affirmed.

Dated, Washington, DC  
February 6, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

---

<sup>10</sup> See *James Kennedy, Jr.*, 40 ECAB 620, 626 (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).

<sup>11</sup> See A.M.A., *Guides* (5<sup>th</sup> ed. 2002) at 523-55. In addition, Dr. Salvo noted that appellant's strength and motion deficits were very limited.