

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY R. BOTTOM and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Pikeville, KY

*Docket No. 02-2262; Submitted on the Record;
Issued June 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a nine percent permanent impairment to his right leg.

On April 16, 1997 appellant, then a 50-year-old coal mine inspector, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he sustained a right knee injury on April 15, 1997. The Office of Workers' Compensation Programs accepted the claim for a right knee strain and a tear of the right medial meniscus. Appellant underwent arthroscopic knee surgery on August 25, 1997 and a partial medial meniscectomy on September 10, 1998.

By decision dated June 11, 2002, the Office granted a schedule award for a nine percent permanent impairment to the right leg. The period of the award was 25.92 weeks of compensation, commencing May 9, 2002.

The Board finds that appellant has no more than a nine percent permanent impairment to the right leg.

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*

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

Evaluation of Permanent Impairment has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, appellant was referred for a second opinion examination by Dr. Anbu Nadar, an orthopedic surgeon. In a report dated May 21, 2002, Dr. Nadar provided a history and results on examination. With respect to the degree of permanent impairment, Dr. Nadar referred to Table 17-33 of the fifth edition of the A.M.A., *Guides*. Dr. Nadar stated that appellant had a two percent impairment for the partial medial meniscectomy and a seven percent impairment for mild anterior cruciate laxity. Table 17-33 provides diagnosis-based impairments for the lower extremity. According to this table, a partial medial meniscectomy represents a two percent leg impairment and mild anterior cruciate laxity represents a seven percent impairment.³ Dr. Nadar combined the impairment values to find a total of nine percent impairment. In a June 8, 2002 report, an Office medical adviser concurred that appellant had a nine percent permanent impairment to the right leg.

The Board finds that the medical evidence of record provides a reasoned medical opinion with respect to the degree of permanent impairment under the A.M.A., *Guides*. Dr. Nadar identified the relevant table and explained how he determined the degree of permanent impairment. Appellant did not submit any medical evidence with a contrary medical opinion. On appeal, appellant argues that the schedule award does not adequately compensate for the medical expenses, reduction in earning capacity, or pain and suffering from the employment injury. The compensation schedule provided in 5 U.S.C. § 8107 is not based on loss of wage-earning capacity, but represents an award of compensation based on a permanent impairment involving the loss of use of a scheduled member or function of the body. The degree of permanent impairment is determined by application of the A.M.A., *Guides*, and the percentage is then applied to the maximum number of weeks of compensation for the scheduled member or function under section 8107(c). For the leg, the maximum is 288 weeks of compensation; therefore, appellant is entitled to 9 percent of the maximum, or 25.92 weeks of compensation commencing with the date of maximum medical improvement.

³ A.M.A., *Guides*, 546, Table 17-33.

The decision of the Office of Workers' Compensation Programs dated June 11, 2002 is affirmed.

Dated, Washington, DC
June 25, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member