U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES R. WENDT and DEPARTMENT OF THE NAVY, STRATEGIC WEAPONS FACILITY PACIFIC, Silverdale, WA

Docket No. 03-728; Submitted on the Record;
Issued June 6, 2003

DECISION and ORDER

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

The issue is whether appellant has more than a two percent permanent impairment of the left leg for which he received a schedule award.

On June 1, 2000 appellant, then a 56-year-old mechanic, filed a claim for a traumatic injury occurring on May 30, 2000 in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for a contusion of the left buttock, a left knee strain and a tear of the medial meniscus of the left knee. On July 17, 2000 Dr. Kent P. VanBuecken, a Board-certified orthopedic surgeon, performed a partial medial meniscectomy on appellant's left knee.

By letter dated January 4, 2002, the Office informed appellant that when he reached maximum medical improvement he should have his attending physician, or if necessary a referral physician, perform an impairment evaluation in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

Dr. VanBuecken referred appellant to Dr. Marc I. Suffis, who is Board-certified in emergency medicine, for an impairment evaluation. In a report dated February 12, 2002, Dr. Suffis discussed appellant's current complaints and reviewed the evidence of record. Dr. Suffis noted that appellant's magnetic resonance imaging (MRI) study showed "marked degenerative changes of the medial compartment with erosion on the cartilage of the medial femoral condyle." On examination, Dr. Suffis found that appellant's left knee was "mildly deformed consistent with osteoarthritic changes." He measured appellant's range of motion as 120 degrees of flexion and 0 degrees of extension of the left knee versus 128 degrees of flexion and 0 degrees extension of the right knee. Dr. Suffis diagnosed a left knee medial meniscus tear most likely due to his employment injury and preexisting degenerative arthritis of the left knee. He stated, "[appellant] has complaints of pain, and difficulty walking, and stair and ladder work. To a large degree, this could be attributed to his significant preexisting arthritic condition." Dr. Suffis found that, according to Table 17-33 on page 546 of the A.M.A., *Guides*, appellant

had a two percent permanent impairment of the left knee due to his partial meniscectomy. He further opined that appellant had reached maximum medical improvement.

On March 22, 2002 the Office referred the case record and a statement of accepted facts to an Office medical adviser for review. In a report dated March 31, 2002, the Office medical adviser opined that appellant had a two percent impairment of the lower extremity based on Table 17-33 on page 546 of the A.M.A., *Guides*.

By decision dated December 9, 2002, the Office granted appellant a schedule award for a two percent permanent impairment of the left leg. The period of the award ran for 5.76 weeks from February 12 to March 24, 2002.

The Board finds that the case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act,[1] and its implementing federal regulation,[2] 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[3] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[4]

The Office medical adviser reviewed the report of Dr. Suffis and concurred with his finding that, according to Table 17-33 on page 546, appellant had a two percent impairment due to his partial medial meniscectomy. However, Dr. Suffis also noted that appellant had a "significant preexisting arthritic condition" based on his MRI and on physical examination. He did not address whether appellant had any impairment of the left lower extremity due to his arthritis but instead noted that it preexisted the employment injury. However, it is well established that in calculating a schedule award for a member of the body that sustained an employment-related impairment, preexisting impairments of that member must be included.[5] Consequently, the Office must take into account any of appellant's nonoccupational arthritic impairments of the left knee in calculating his schedule award.[6] Therefore, the case must be remanded for the Office to request that Dr. Suffis provide an opinion on whether appellant has

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] 20 C.F.R. § 10.404(a).

[4] *See* FECA Bulletin No. 01-5 (issued January 29, 2001).

[5] *See Dale Larson*, 41 ECAB 481 (1990); *Pedro M. De Leon, Jr.*, 35 ECAB 487 (1983).

[6] *See Raymond E. Gwynn*, 35 ECAB 247 (1983) (finding that preexisting arthritis had to be considered along with present knee conditions in determining the degree of impairment); *see also Pedro M. De Leon, Jr., supra* note 5 (finding that an impairment rating for an accepted knee contusion injury must include consideration of preexisting degenerative knee changes).

any impairment due to his preexisting arthritis of the left knee.[7] After such further development as the Office deems necessary, it shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated December 9, 2002 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
June 6, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] The fifth edition of the A.M.A., *Guides* provides that arthritic impairments should be based on roentgenographically determined cartilage intervals; *see* A.M.A., *Guides*, 544, Table 17-31.