U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBEN FRANCO and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Anthony, TX

Docket No. 02-2194; Submitted on the Record;
Issued March 21, 2003

DECISION and ORDER

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

The issue is whether appellant has established entitlement to a schedule award under 5 U.S.C. § 8107.

On May 9, 2001 appellant, then a 55-year-old brush maker foreman, filed a traumatic injury claim alleging that he sustained a right knee injury while in the performance of duty. Appellant underwent right knee surgery on July 9, 2001 and January 8, 2002. The record reflects that he underwent partial medial meniscectomies of the right knee with chondroplasty, related to the employment injury.

On February 26, 2002 appellant submitted a claim for compensation (Form CA-7), for a schedule award. By decision dated July 24, 2002, the Office of Workers' Compensation Programs indicated that it had accepted the claim for a right knee condition. The Office found that the evidence from appellant's attending physician established that the condition did not result in a ratable permanent impairment.

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 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 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

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

appropriate standard for evaluating schedule losses. As of February 1, 2001, the fifth edition of the A.M.A., *Guides* is to be used to calculate schedule awards.[3]

In this case the Office determined that appellant was not entitled to a schedule award based on a June 7, 2002 report from an attending orthopedic surgeon, Dr. Barry Cromer. The Office stated that he reported a zero percent impairment. A review of this report, however, indicates only that Dr. Cromer reported no impairment due to loss of range of motion. He clearly found that appellant had two different partial medial meniscectomies and he opined that appellant had a three percent whole person impairment for a total meniscectomy.[4] According to established Office procedure, the medical evidence should be referred to an Office medical adviser for an opinion on the percentage of permanent impairment under the A.M.A., *Guides.*[5] On return of the case record, the Office should properly develop the medical evidence and issue an appropriate decision with respect to appellant's entitlement to a schedule award.[6]

[3] FECA Bulletin No. 01-05 (issued January 29, 2001).

[4] Although Dr. Cromer does not identify a specific table, Table 17-33 provides a three percent whole person impairment, equal to a seven percent leg impairment, for a total meniscectomy. A.M.A., *Guides*, 546, Table 17-33.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

[6] On appeal, appellant contends that due to his injury he is unable to jog or sit comfortably in the theater. The schedule award provisions of the Federal Employees' Compensation Act allow up to 288 weeks of compensation for complete (total) loss of use of a leg. *See* 5 U.S.C. § 8107(c)(2). Less than total loss is compensated at a proportionate rate. The amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities. *See Harry D. Butler*, 43 ECAB 859 (1992); *Timothy J. McGuire*, 34 ECAB 189 (1982); *Robert R Kuehl*, 13 ECAB 77 (1961).

The decision of the Office of Workers' Compensation Programs dated July 24, 2002 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
March 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member