

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHANIE B. JONES and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE & ACCOUNTING SERVICE, Norfolk, VA

*Docket No. 03-58; Submitted on the Record;
Issued March 14, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 15 percent permanent impairment of the left and right lower extremities, for which she received a schedule award.

On January 8, 1996 appellant, then a 33-year-old accounting technician, sustained injuries to both knees when she slipped and fell on ice in the performance of duty. The Office of Workers' Compensation Programs initially accepted appellant's claim for bilateral knee sprains and later expanded the claim to include bilateral medial meniscus tear and repair. On July 5, 1996 appellant underwent a partial lateral meniscectomy on her left knee. She underwent a similar arthroscopic procedure on her right knee on September 17, 1996.

On November 9, 1999 the Office granted appellant a schedule award for a 15 percent permanent impairment of both the left and right lower extremities.¹ The award covered a period of 86.4 weeks.

On March 6, 2001 appellant filed a claim (Form CA-7) for an additional schedule award. By decision dated May 23, 2001, the Office denied appellant's claim. In finding that there was no basis for an additional schedule award, the Office explained that the recent evidence from appellant's orthopedist, Dr. Arthur W. Wardell, only supported a 10 percent permanent impairment of the left and right lower extremities. The Office further noted that its medical adviser reviewed the relevant medical evidence and calculated only a two percent permanent impairment of the lower extremities.

Appellant requested an oral hearing, which was held October 30, 2001. In a decision dated January 18, 2002, the Office hearing representative affirmed the May 23, 2001 decision.

¹ The Office based this award on the September 10, 1999 report of its medical adviser.

On March 19, 2002 appellant requested reconsideration and she submitted additional medical evidence from her treating physician. By decision dated July 8, 2002, the Office denied modification of the hearing representative's January 18, 2002 decision.

The Board finds that appellant failed to establish that she has more than a 15 percent permanent impairment of the left and right lower extremities.

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (4th ed. 2001).⁴

Appellant alleges that she has a 25 percent permanent impairment of both her left and right lower extremities based on Dr. Wardell's February 15, 2002 report. In his report Dr. Wardell stated his impairment rating was obtained from the A.M.A., *Guides* (5th ed. 2001). He explained that appellant had a 10 percent impairment of the left and right knee using Table 17-5. Dr. Wardell also stated that appellant had a 24 percent impairment of both lower extremities "using Table 17-8 due to Grade 4 flexion/extension weakness" and a 2 percent impairment using Table 17-33 "because she is status post partial lateral meniscectomy." Dr. Wardell concluded that "it is reasonable using these tables to give [appellant] a 25 [percent] physical impairment of each lower extremity."

While Dr. Wardell referenced the A.M.A., *Guides* in his February 15, 2002 report, it is not entirely clear how the doctor arrived at his 25 percent bilateral lower extremity impairment rating. The only aspect of Dr. Wardell's February 15, 2002 report that is self-explanatory is the two percent impairment rating under Table 17-33 at page 546 of the A.M.A., *Guides* (5th ed. 2001). The diagnosis-based estimate for a partial lateral meniscectomy, which appellant underwent on July 15 and September 17, 1996, allows for a two percent impairment for each lower extremity. While this much is clear, the remainder of Dr. Wardell's report is questionable.

Dr. Wardell's calculation of a 10 percent bilateral impairment for gait derangement under Table 17-5 is unclear in that the applicable table provides 11 distinct ranges of severity with a corresponding "whole person impairment" ranging from 7 to 80 percent. Dr. Wardell did not identify the particular level of severity nor did he explain how he ostensibly converted the whole person impairment rating to a "10 percent ... impairment of the right knee and left knee." Dr. Wardell's 24 percent rating under Table 17-8 for lower extremity muscle weakness similarly

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ FECA Bulletin No. 01-05 (January 29, 2001).

lacks specificity. While a Grade 4 weakness rating at the knee corresponds to a 12 percent impairment for flexion and a 12 percent impairment for extension under Table 17-8 at page 532 of the A.M.A., *Guides*, Dr. Wardell did not explain or identify the factors that supported his rating of Grade 4. As set forth under Table 17-7 at page 531 of the A.M.A., *Guides*, the criteria for a Grade 4 muscle function rating is “active movement against gravity with some resistance.” Dr. Wardell’s February 15, 2002 report does not include any specific physical findings nor does it refer to any prior findings that would support a Grade 4 rating of muscle function under Table 17-7.

Although Dr. Wardell referenced the applicable edition of the A.M.A., *Guides* in his February 15, 2002 report and cited various tables, he did not clearly explain the basis for his rating or identify the findings on examination that would support his 25 percent bilateral lower extremity impairment rating. As Dr. Wardell did not specifically correlate his findings with the A.M.A., *Guides*, his February 15, 2002 impairment rating is insufficient to establish the extent of appellant’s permanent impairment.⁵ Accordingly, appellant failed to provide any probative medical evidence that she has greater than a 15 percent permanent impairment of the left and right lower extremities.

The July 8, 2002 decision of the Office of Workers’ Compensation Programs is hereby affirmed.⁶

Dated, Washington, DC
March 14, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ *Lela M. Shaw*, 51 ECAB 372 (2000).

⁶ The record on appeal includes evidence received by the Office after the issuance of the July 8, 2002 decision. As the Board’s review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant’s newly submitted evidence. 20 C.F.R. § 501.2(c).