

January 21, 1999 Dr. Karl R. Blum, a Board-certified orthopedic surgeon, performed a surgical repair of a rupture of appellant's right patella tendon. By decision dated February 26, 1999, the Office accepted his claim for tendon rupture right knee. He returned to light duty on May 1, 1999.

In a note dated July 13, 2000, Dr. Blum found that appellant had reached maximum medical improvement and stated that he experienced persistent low level trouble with his knee. Appellant requested a schedule award on April 26, 2001. The Office requested that Dr. Blum provide a detailed report describing any permanent impairment appellant had developed due to his accepted right knee injury. In a note dated April 12, 2002, Dr. Blum provided physical findings noting that his range of motion in his right knee was from full extension to 110 degrees. He stated that appellant experienced discomfort with palpitation over the patella-femoral joint, pain over the patella tendon and some quadriceps atrophy. Dr. Blum indicated that he would provide an impairment rating.

By decision dated August 1, 2002, the Office denied appellant's claim for a schedule award noting that Dr. Blum failed to provide detailed physical findings supporting an impairment rating pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

Appellant requested an oral hearing on October 25, 2002 and submitted additional reports from Dr. Blum dated February 10 and March 24, 2003 noting that he was experiencing discomfort in his right knee and that x-rays demonstrated mild to moderate degenerative changes. By decision dated June 5, 2003, the hearing representative set aside the Office's August 1, 2002 decision and remanded the case for additional development of the medical evidence.

On July 30, 2003 the Office referred appellant for a second opinion evaluation with Dr. Irving Strouse, a Board-certified orthopedic surgeon.¹ In a report dated July 28, 2003, he noted appellant's history of injury and performed a physical examination. Dr. Strouse found a well-healed anterior scar and also that appellant had no limp, no quadriceps atrophy, excellent quadriceps strength, no effusion and only "very mild tenderness along the medial joint line." He also reported no instability and range of motion from 0 to 115 degrees. Dr. Strouse concluded that appellant had no evidence of permanent impairment. The Office medical adviser reviewed this report on September 9, 2003 and concluded that appellant had no permanent impairment due to his accepted employment injury as Dr. Strouse's examination was "essent[ially] normal."

By decision dated September 10, 2003, the Office denied appellant's claim for a schedule award, finding that Dr. Strouse's report was sufficient to establish that he had no ratable permanent impairment as a result of his accepted employment injury.²

¹ The Office initially referred appellant to Dr. Charles Rizzo for an examination. He reported for this examination, but Dr. Rizzo informed him that he did not perform evaluations for schedule award purposes.

² Following the September 10, 2003 merit decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

Appellant requested an oral hearing on November 18, 2003. By decision dated December 16, 2003, the Branch of Hearings and Review denied his request as untimely and further determined that the request should be denied as the issue could equally well be addressed on reconsideration.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from his physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁵

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a rupture of his right patella tendon as a result of his January 14, 1999 employment injury. His attending physician, Dr. Blum, a Board-certified orthopedic surgeon, found that appellant reached maximum medical improvement on July 13, 2000 diagnosing, "low level trouble with his knee" and patello-femoral pain. Appellant requested a schedule award on April 26, 2001. The Office then requested additional medical evidence from Dr. Blum. His April 12, 2002 report did not provide a description of the impairment, including any atrophy or deformity, decrease in strength or disturbance of sensation or any other pertinent descriptions of the impairment. His report was not in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. Dr. Blum merely provided appellant's

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

range of motion from full extension to 110 degrees and indicated that further detailed information would be forthcoming.⁶

In reports dated February 10 and March 24, 2003, Dr. Blum noted that appellant was experiencing discomfort in his right knee and that x-rays demonstrated mild to moderate degenerative changes. The A.M.A., *Guides* require evaluation of x-rays to determine impairment ratings due to arthritis. Specifically, the physician must provide the cartilage interval or joint space of the affected joint.⁷ As Dr. Blum did not provide the necessary detailed findings regarding joint space or cartilage interval as demonstrated by x-rays, his report is not sufficient to establish any impairment due to arthritis under the A.M.A., *Guides*.

Following the June 5, 2003 decision of the hearing representative, the Office referred appellant to Dr. Strouse, a Board-certified orthopedic surgeon, to determine the permanent impairment, if any, due to appellant's accepted employment injury. His July 28, 2003 report provided detailed physical findings and noted that appellant did not demonstrate a limp, that he had no quadriceps atrophy, excellent quadriceps strength, no effusion and only "very mild tenderness along the medial joint line." Dr. Strouse also reported no instability, a well-healed surgical scar and range of motion from 0 to 115 degrees.⁸ He concluded that appellant had no evidence of any permanent impairment. The Office medical adviser agreed with this conclusion.

Dr. Strouse's July 28, 2003 report represents the weight of the medical evidence. He provided detailed findings resulting from his physical examination and properly concluded that appellant had no permanent impairment as a result of the accepted employment injury. As Dr. Blum's reports lacked detailed findings and correlation with the A.M.A., *Guides*, his reports are not sufficient to create a conflict with the July 28, 2003 report from Dr. Strouse and do not require further development on the part of the Office. Appellant has not submitted sufficient medical evidence to establish that his accepted employment injury of ruptured tendon in his right leg resulted in a permanent impairment entitling him to a schedule award.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁹

⁶ The A.M.A., *Guides* do not provide an impairment rating for loss of flexion 110 degrees or over. Therefore, appellant does not have a ratable impairment due to loss of range of motion. A.M.A., *Guides*, 537, Table 17-10.

⁷ A.M.A., *Guides*, 544, section 17.2h Arthritis. *Norman D. Armstrong*, 55 ECAB ___ (Docket No. 04-306, issued June 23, 2004).

⁸ *See supra* note 6.

⁹ 5 U.S.C. § 8124(b)(1).

The Office's regulation and Board precedent hold that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.¹⁰ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.¹¹

ANALYSIS -- ISSUE 2

In the instant case, the Office properly determined that appellant's November 18, 2003 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's September 10, 2003 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny his request for a hearing as he had other review options available.

CONCLUSION

The Board finds that appellant has not submitted the necessary detailed medical evidence to establish a permanent impairment as a result of his accepted employment injury. The Board further find that the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely and properly exercised its discretion.

¹⁰ 20 C.F.R. § 10.616; *Tammy J. Kenow*, 44 ECAB 619 (1993).

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 16 and September 10, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 19, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member