

collateral ligament. On March 4, 2003 the Office modified appellant's claim to include the additional condition of right medial meniscus tear.

On May 22, 2003 Dr. Barney C. Horvath, a Board-certified orthopedic surgeon, performed an arthroscopic partial medial meniscectomy and chondroplasty. The Office entered appellant on the periodic rolls on June 16, 2003. Dr. Horvath released appellant to return to work on July 7, 2003 and appellant returned to work on July 8, 2003.

In a note dated September 2, 2003, Dr. Horvath found that appellant had reached maximum medical improvement as of that date. He stated that appellant had no further effusion, that his range of motion was improved and that his quadriceps strength was slightly limited. Dr. Horvath opined that appellant had a five percent permanent impairment of the whole person and found that appellant could return to full duty.

Appellant requested a schedule award on December 17, 2003. The Office requested additional information regarding appellant's permanent impairment from Dr. Horvath on January 7, 2004. The Office informed Dr. Horvath that schedule awards were not payable for the whole person. Dr. Horvath submitted a report dated September 2, 2003 on January 20, 2004 and provided September 2, 2003 as the date of maximum medical improvement. He did not provide additional findings and again stated that appellant had a five percent impairment of the "total body."

The Office medical adviser reviewed the medical evidence on February 19, 2004 and found that appellant was entitled to a two percent impairment of the right lower extremity due to a partial medial meniscectomy. By decision dated February 27, 2004, the Office granted appellant a schedule award for a 2 percent permanent impairment of his right lower extremity to run for 5.76 weeks from September 2 to October 12, 2003.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing federal 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, neither the Act nor the regulation specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for 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 Office, in its implementing regulation, adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (5th ed. 2001).

⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

A medical opinion regarding permanent impairment that is not based upon the A.M.A., *Guides*, the standard adopted by the Office and approved by the Board as appropriate for evaluating schedule losses, is of little probative value in determining the extent of a claimant's permanent impairment.⁵

ANALYSIS

In this case, the Office accepted appellant's claim for right knee strain and medial meniscus tear. Dr. Horvath, a Board-certified orthopedic surgeon and appellant's attending physician, performed an arthroscopic partial medial meniscectomy and chondroplasty on May 22, 2003. He found that appellant had reached maximum medical improvement on September 2, 2003 and concluded that appellant had a five percent permanent impairment of the whole person due to his accepted employment injury. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulation.⁶ While the A.M.A., *Guides* provide for both impairment to the individual member and to the whole person, the Act does not provide for permanent impairment for the whole person.⁷ Therefore, appellant is not entitled to such an award. Furthermore, Dr. Horvath did not provide a correlation between his physical findings and the A.M.A., *Guides* in reaching his impairment rating. Therefore, his report is of limited probative value.

The Office medical adviser reviewed the evidence in the record on February 19, 2004. He noted that appellant underwent a partial medial meniscectomy on May 22, 2003. Utilizing the diagnosis-based estimates of the A.M.A., *Guides*, the Office medical adviser determined that appellant had a two percent permanent impairment of his lower extremity due to the partial medial meniscectomy.⁸ As the Office medical adviser properly applied the A.M.A., *Guides* to the medical evidence of record, his report constitutes the weight of the medical evidence and establishes that appellant had no more than a two percent permanent impairment of the right lower extremity.⁹

Appellant is entitled to receive a schedule award for two percent loss of use of his right lower extremity. The schedule award provision of the Act specifies the number of weeks of compensation to be paid for each permanent impairment listed in the schedule.¹⁰ As appellant had 2 percent loss of use of his right leg, he is entitled to 2 percent of 288 weeks of compensation¹¹ or 5.76 weeks as awarded by the Office.

⁵ *Carolyn E. Sellers*, 50 ECAB 393, 394 (1999).

⁶ *George E. Williams*, 44 ECAB 530, 533 (1993).

⁷ *Janae J. Triplette*, 54 ECAB ____ (Docket No. 03-1545, issued September 4, 2003).

⁸ A.M.A., *Guides*, 546, Table 17-33.

⁹ *Jesse Mendoza*, 54 ECAB ____ (Docket No. 03-1516, issued September 10, 2003).

¹⁰ 5 U.S.C. § 8107.

¹¹ 5 U.S.C. § 8107(c)(2).

CONCLUSION

The Board finds that appellant has no more than a two percent permanent impairment of his right lower extremity for which he received a schedule award. The Board further finds that the Office properly granted appellant 5.76 weeks of compensation.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member