

**United States Department of Labor
Employees' Compensation Appeals Board**

LARRY LEE COOK, JR., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Cumberland, MD, Employer**

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**Docket No. 04-70
Issued: February 19, 2004**

Appearances:
Melford V. McCormick, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On October 3, 2003 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated July 3, 2003 which determined that appellant was not entitled to a schedule award for impairment to the left lower extremity of greater than two percent. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant had more than a two percent impairment of his left lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On February 25, 1998, appellant, then a 37-year-old correctional officer, filed a traumatic injury claim alleging that on February 23, 1998 he sustained an injury to his left knee. By letter dated May 5, 1998, the Office accepted appellant's claim for left knee sprain and left knee arthroscopy.

On August 18, 2000 appellant filed a claim for a schedule award. Although this claim was initially denied in a decision dated March 28, 2001, and denied reconsideration by decision dated July 2, 2001, by decision dated March 21, 2002, the Office found that the information submitted with appellant's request for reconsideration was sufficient to resume processing of schedule award benefits associated with the February 23, 1998 left knee injury.

By letter dated April 12, 2002, appellant was referred for a second opinion evaluation to Dr. Jeffrey Woodward, a Board-certified physiatrist. In a report dated May 2, 2002, Dr. Woodward opined:

“**IMPRESSION:** Chronic left knee pain. Arthroscopy findings of left tibial plateau osteochondral defect partial thickness. Full active motion persists with no instability. Concordant moderate left central knee pain consistent with tibial plateau osteochondral defect. While the patient may develop progressive osteoarthritic change from the osteochondral defect, no such abnormality is apparent now.

“**IMPAIRMENT:** Based on the A[merican] M[edical A[ssociation,] *Guides to the Evaluation of Permanent Impairment*, 5th edition, I would recommend the following impairment rating: Based on conventional guidelines, patient has no impairment. However, based on Chapter 18, page 573, Table 18-3D, No. 2, patient qualifies for impairment due to pain disorder: Table 18-3, Class 2, patient has moderate pain severity, patient takes Lodine frequently for knee pain, patient changed to lighter work duty due to left knee pain, patient will need future medical monitoring for follow-up left knee x-ray to evaluate arthritic changes, patient reported mild affective distress with pain -- in respect to these findings, I would recommend a permanent impairment rating of two [percent] at the lower extremity level.”

In a report dated May 29, 2002, the Office medical adviser noted that Dr. Woodward's rating was acceptable, and indicated that appellant should be issued a schedule award for a two percent impairment of the left lower extremity.

The Office, by decision dated August 16, 2002, granted appellant a schedule award for two percent impairment of his left lower extremity.

On September 5, 2002 appellant requested review by a hearing representative. By decision dated July 3, 2003, the hearing representative found that the evidence did not support that appellant had an impairment of greater than two percent of the left lower extremity and accordingly affirmed the August 16, 2002 decision.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, the Act does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law 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 A.M.A., *Guides*³ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

ANALYSIS

In the instant case, Dr. Woodward carefully applied the A.M.A., *Guides* and determined that appellant was entitled to an award based on a two percent impairment of the left lower extremity for pain. Dr. Woodward noted that, based on conventional guidelines, appellant had no impairment, but recommended the two percent impairment rating based on Chapter 18, page 573, Table 18-3(d) of the A.M.A., *Guides*, for pain disorder. The Office medical adviser concurred with this assessment. Pursuant to Table 18,3(d)E of the A.M.A., *Guides*, if the examiner performs a formal pain-related impairment assessment, the impairment rating may be increased by up to three percent. The examiner's rating should be made after an assessment of the pain-related impairment as either mild, moderate, moderately severe or severe. Based upon appellant's pain assessment as moderate, with some modification in daily life activities and ongoing medical monitoring, Dr. Woodward and the Office medical adviser properly did not find that appellant's pain impairment should be rated at the maximum three percent, but rather at the middling two percent impairment rating. There is no medical opinion in the record establishing that appellant has a higher degree of impairment. Accordingly, the Board finds that the Office properly determined that appellant had a two percent impairment of his left lower extremity.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (2002).

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁴ See *Joseph Lawrence*, *supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 3, 2003 is affirmed.

Issued: February 19, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member