

**United States Department of Labor
Employee's Compensation Appeals Board**

LINDSAY K. CAMERON, Appellant

and

**DEPARTMENT OF JUSTICE,
FEDERAL CORRECTIONAL INSTITUTION,
Lompoc, CA, Employer**

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**Docket No. 04-893
Issued: July 16, 2004**

Appearances:
Lindsay K. Cameron, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 17, 2004 appellant filed a timely appeal of the February 2, 2004 merit decision of the Office of Worker's Compensation Programs, which found that he had no more than a 15 percent impairment of the left and right lower extremity for which he received a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether the Office properly determined that appellant had no more than a 15 percent impairment of the left and right lower extremity for which he received a schedule award.

FACTUAL HISTORY

On July 9, 2003 appellant, then a 43-year-old warden, filed a claim alleging that he slipped on the sidewalk and injured both knees. His condition was accepted for bilateral knee

contusions and strains, left knee meniscus tear and neck strain. Appellant did not stop work. Appropriate compensation benefits were paid.

Appellant's physician, Dr. Stephen R. Birch, a Board-certified orthopedist, noted treating him from August 28 to November 20, 2003 for increased symptom logy in both knees, secondary to osteoarthritis, post contusion and a twisting injury. In August and September 2003, Dr. Birch performed multiple Supartz injections to both of appellant's knees; however, this treatment did not provide any marked relief. A September 20, 2003 magnetic resonance imaging (MRI) scan of the right knee revealed marked degenerative disease with a large joint effusion, significant tricompartmental chondromalacia and a possible tear of the posterior horn of the meniscus. On October 20, 2003 Dr. Birch performed arthroscopic surgery on the right knee, a partial medial meniscectomy, removal of intra-articular loose bodies and resection of a large chondral flap tears, trochlea and patella. The physician diagnosed osteoarthritis, medial meniscus tear, intra-articular loose bodies, large chondral flap tears, Grade 4 chondromalacia of the patella and chondral flap tear of the patella. On November 3, 2003 appellant underwent an MRI scan of the left knee which revealed two loose bodies posterior to the knee joint, severe degenerative change with chondromalacia and prominent osteophytes and meniscal degeneration and tearing and an extension to the articular surface reflective of a tear. On November 20, 2003 Dr. Birch performed a medial and lateral partial meniscectomy of the left knee, removal of intra-articular loose bodies, debridement of the joint and diagnosed lateral meniscus tear, medial meniscus tear and intra-articular loose body.

On December 15, 2003 appellant filed a claim for a schedule award. He submitted a December 17, 2003 report from Dr. Birch, who opined that appellant sustained a 75 percent loss of the function of his right knee secondary to cartilaginous loss.

In a memorandum dated December 29, 2003, the Office referred Dr. Birch's reports and the case record to the Office medical adviser for evaluation as to the extent of impairment of the right and left lower extremity in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ (A.M.A., *Guides*). The Office medical adviser determined that appellant had reached maximum medical improvement on December 17, 2003 with regard to both the right and left knee. He determined that appellant sustained a 15 percent impairment of both the right and left lower extremity.²

In a decision dated February 2, 2004, the Office granted appellant a schedule award for 15 percent impairment of the right leg and 15 percent impairment of the left leg. The schedule award was granted for the period December 17, 2003 to August 12, 2005.

¹ A.M.A., *Guides* (5th ed. 2001).

² See A.M.A., *Guides* 544, Table 17-31 (5th ed. 2001).

LEGAL PRECEDENT

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.

ANALYSIS

The Office accepted appellant's claim for bilateral knee contusions for which arthroscopic surgery was authorized and performed on October 20 and November 20, 2003. On appeal appellant does not dispute the impairment rating of the Office medical adviser with respect to the left knee, but contends that he has greater impairment of the right knee.

The Board has carefully reviewed the Office medical adviser's January 5, 2004 report and notes that, while he found a 15 percent ratable impairment for each of the left and right lower extremity, he did not adequately explain how his determination was reached in accordance with the A.M.A., *Guides*.⁵ On January 5, 2004 he calculated a 15 percent impairment of the left and right lower extremity for arthritis under Table 17-31 at page 544 of the A.M.A., *Guides*. However, the A.M.A., *Guides* provide any such estimate must be based on an x-ray, which was not obtained by Dr. Birch. The Office medical adviser merely noted that the impairment could be best rated based on appellant's development of post-traumatic arthritis. There is no explanation as to how he determined that appellant sustained a 15 percent impairment of the right and left lower extremity. The A.M.A., *Guides*, Table 17-31, page 544, allow for a 7 percent impairment for cartilage interval of 3 millimeters and a 20 percent impairment for cartilage interval of 2 millimeters. The Office medical adviser failed to correlate his findings to the A.M.A. *Guides* or otherwise explain his determination.

Dr. Birch did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.⁶ On December 17, 2003 he noted right knee range of motion for flexion was 90 degrees for an impairment rating of 10 percent.⁷ Dr. Birch noted that ankylosis was present, but he failed to provide an impairment rating in accordance with the A.M.A. *Guides*. He noted that appellant lost 70 to 80 degrees of motion in the right knee, but did not identify whether the loss of motion was flexion, flexion contracture, varus or

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

⁶ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

⁷ See A.M.A., *Guides* 537, Table 17-10 (5th ed. 2001).

valgus. The physician noted that there was evidence of chronic atrophy and weakness of the quadriceps bilaterally, but he did not provide an impairment rating due to unilateral leg muscle atrophy in accordance with Table 17-6 at page 530 of the A.M.A., *Guides* or grade the described muscle weakness in accordance with Table 17-8 at page 532 of the A.M.A., *Guides*. Dr. Birch indicated that appellant underwent a partial medial meniscectomy of the right knee and a partial medial and lateral medial meniscectomy of the left knee, but did not provide estimates of impairments for surgery.⁸ He noted that appellant showed evidence of arthritis, specifically Grade 4 throughout the entire patellofemoral joint, Grade 2 throughout the medial compartment and Grade 1 throughout the lateral compartment. The physician calculated that appellant sustained a 75 percent loss of function of the right knee secondary to cartilaginous loss. The Board notes that Dr. Birch did not correlate his findings to the A.M.A. *Guides*. The A.M.A., *Guides* at Table 17-2, provide that if the evaluator uses the arthritis analysis then he cannot also use the loss of muscle atrophy, muscle strength, range of motion and ankylosis loss, gait derangement analysis or the diagnostic based estimates.⁹ The A.M.A., *Guides*, Table 17-2 further provide that range of motion techniques are of limited value for estimating impairment secondary to arthritis in many individuals as most people with arthritis are impaired more by pain and sometimes weakness, but can still maintain functional range of motion.

The Board will remand the case to the Office for appropriate development of the medical record to determine the extent of impairment of appellant's left and right lower extremities in accordance with the A.M.A., *Guides*. Following this and any other further development as deemed necessary, the Office shall issue a merit decision on appellant's schedule award claim.

⁸ See A.M.A., *Guides* 546, Table 17-33 (5th ed. 2001).

⁹ See A.M.A., *Guides* 526, Table 17-2 (5th ed. 2001).

CONCLUSION

The Board finds that this case is not in posture for decision regarding appellant's entitlement to permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2004 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further development in accordance with this decision of the Board.

Issued: July 16, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member