

In a report dated February 20, 2001, Dr. David Weiss, an osteopath, determined that appellant had a 17 percent impairment of the right lower extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) fifth edition. He stated:

“Examination of the right knee reveals well-healed portal arthroscopy scars. There is no gross effusion noted. Patellar apprehension and inhibition signs are negative. There is persistent tenderness over the medial joint line. There is tenderness over the medial patellar facet. Range of motion is a full 140 degrees. Patellofemoral compression produces crepitance at 30 degrees but not pain. Valgus and varus stress tests produce firm endpoints. The Lachman and anterior drawer signs are negative. There is some atrophy noted along the vastus medialis oblique consistent with measured atrophy.”

Dr. Weiss noted that the quadriceps circumference measured 56 centimeters in the right leg, as opposed to 58 centimeters on the left. He advised that quadriceps testing was graded at 4+/5 on the right. Dr. Weiss diagnosed post-traumatic chondromalacia patella to the right knee, postarthroscopic surgery to the right knee with arthroscopic shaving of the patella and post-traumatic synovitis to the right knee. He related complaints of right knee pain and stiffness on an intermittent basis, with swelling and locking of her right knee and increased pain with weather changes. Dr. Weiss advised that patellofemoral compression produced crepitance at 30 degrees and noted some atrophy along the vastus medialis oblique consistent with measured atrophy. Based on these findings, Dr. Weiss apportioned 5 percent impairment for right patellofemoral pain/crepitance under Table 17-31, page 544 of the A.M.A., *Guides* and 13 percent impairment for right thigh atrophy under Table 17-6, page 530 of the A.M.A., *Guides*, for a total right lower extremity impairment of 17 percent.

On April 24, 2001 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right lower extremity.

In an impairment evaluation dated June 7, 2001, an Office medical adviser found that appellant had a 13 percent impairment of her right lower extremity based on the A.M.A., *Guides*. He disagreed with Dr. Weiss’ opinion that appellant’s thigh atrophy produced a 13 percent impairment, noting that, pursuant to Table 17-6, page 530 of the A.M.A., *Guides*, there was a range in measurements from 2 and 2.9 centimeters, which corresponded to a range of impairment of between 8 and 13 percent. The Office medical adviser stated that, because Dr. Weiss had calculated an atrophy deficit in the right thigh of 2 centimeters, the lowest end of the scale, this corresponded to an 8 percent impairment for atrophy, the lowest quantifiable measurement listed in Table 17-6. The Office medical adviser concurred with Dr. Weiss’ finding of a 5 percent impairment derived from right patellofemoral pain/crepitance, pursuant to Table 17-31, page 544 of the A.M.A., *Guides*.

The Office determined there was a conflict in the medical evidence between the impairment ratings of Dr. Weiss and the Office medical adviser and it referred appellant, together with a statement of accepted facts and the case record, to Dr. Ian B. Fries, a Board-

certified orthopedic surgery, for an impartial medical evaluation.¹ In a report dated March 6 2003, Dr. Fries determined that appellant had a five percent permanent impairment for loss of use of the right lower extremity. He derived this rating by according a 5 percent impairment from arthritis, pursuant to Table 17-31, page 544 of the A.M.A., *Guides*. Dr. Fries cited a footnote to Table 17-31 which he deemed applicable to appellant's condition. The footnote stated:

“In an individual with a history of direct trauma, a complaint of patellofemoral pain and crepitation on physical examination, but without joint space narrowing on x-rays, a [two] percent whole person or [five] percent lower extremity impairment is given.”

Dr. Fries, however, stated that, pursuant to Table 17-2, page 526 of the A.M.A., *Guides*, an impairment rating based on arthritis may not be combined with a rating based on muscle atrophy. He therefore limited appellant's rating to the 5 percent impairment derived from arthritis in accordance with Table 17-31 and its attendant footnote.

In an impairment evaluation dated March 20, 2003, an Office medical adviser found that appellant had a five percent impairment of her right lower extremity based on the A.M.A., *Guides*, in accordance with the findings and conclusions of the impartial medical examiner, Dr. Fries.

On April 24, 2003 the Office granted appellant a schedule award for a five percent permanent impairment of the right lower extremity for the period April 19 to July 28, 1988, for a total of 14.40 weeks of compensation.

By letter dated April 11, 2003, appellant's attorney requested a hearing, which was held on January 28, 2004. Appellant submitted a June 9, 2003 report from Dr. Weiss, who concurred with Dr. Fries' opinion that an impairment rating based on arthritis cannot be combined with a rating based on atrophy pursuant to Table 17-2, page 526 of the A.M.A., *Guides*. However, Dr. Weiss stated that, because he had determined that there was considerable atrophy in appellant's right thigh during his February 20, 2001 examination, appellant should be accorded an additional 3 percent, pain-related impairment, pursuant to Figure 18-1, page 574 of the A.M.A., *Guides*, for a total 8 percent impairment of the right lower extremity.

In a decision dated March 18, 2004, an Office hearing representative affirmed the April 24, 2003 Office decision and denied appellant's claim for a greater additional award. The hearing representative stated that Dr. Weiss failed to explain why he had accorded a separate, three percent impairment based on pain in his June 9, 2003 report, which he had not done in his original February 20, 2001 report based on his contemporaneous examination of appellant. The hearing representative therefore found that Dr. Weiss' June 9, 2003 report did not constitute medical evidence sufficient to entitle appellant to an additional schedule award and affirmed the

¹ The Office initially referred appellant to another impartial examiner, Dr. Harry Bade, a Board-certified orthopedic surgeon. However, the Office medical adviser was unable to ascertain the basis of Dr. Bade's impairment rating. The Office determined that it could not rely on Dr. Bade's opinion and referred appellant to another impartial examiner.

April 24, 2003 Office decision finding that Dr. Fries' opinion constituted the weight of the medical evidence.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, fifth edition as the standard to be used for evaluating schedule losses.⁴

ANALYSIS

In this case, Dr. Fries, the impartial medical specialist, calculated a 5 percent impairment of the right lower extremity by deriving a 5 percent impairment from arthritis, pursuant to Table 17-31, page 544 of the A.M.A., *Guides*. Dr. Fries cited the footnote to Table 17-31 at page 544 which apportioned a 5 percent lower extremity impairment to an individual with a history of direct trauma, a complaint of patellofemoral pain and crepitation on physical examination, but without joint space narrowing on x-rays. Dr. Fries properly determined that these findings applied to appellant's condition. He further found that pursuant to Table 17-2, page 526 of the A.M.A., *Guides*, an impairment rating based on arthritis may not be combined with a rating based on muscle atrophy. Dr. Fries therefore determined that appellant was entitled to a total five percent impairment for the right lower extremity. The Office medical adviser adopted Dr. Fries' findings and five percent impairment rating.

The Board holds that the Office properly found that Dr. Fries' referee opinion finding a five percent impairment of the right lower extremity was sufficiently probative, rationalized and based upon a proper factual background and that the Office medical adviser acted properly in adopting this impairment rating. Therefore, the Office acted correctly in according Dr. Fries' opinion the special weight of an impartial medical examiner.⁵ Accordingly, the Board finds that Dr. Fries' opinion constituted sufficient medical rationale to support the Office's April 24, 2003 schedule award decision. Following the Office's decision, appellant submitted Dr. Weiss' June 9, 2003 report, in which Dr. Weiss concurred with Dr. Fries' opinion that an impairment rating based on arthritis cannot be combined with a rating based on atrophy pursuant to

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

⁵ Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight. *Gary R. Seiber*, 46 ECAB 215 (1994); *Aubrey Belnavis*, 37 ECAB 206 (1985).

Table 17-2, page 526 of the A.M.A., *Guides*, but determined that appellant was entitled to an additional 3 percent impairment for pain, pursuant to Figure 18-1, page 574 of the A.M.A., *Guides*, due to his February 20, 2001 finding of “considerable atrophy” in the right thigh. The Office hearing representative rejected Dr. Weiss’ additional pain-related rating and found that Dr. Fries’ impartial opinion still represented the weight of the medical evidence. This finding was proper, as Dr. Weiss failed to explain the process by which pain-related impairment increased the burden of appellant’s condition, as required by Figure 18-1, page 574 of the A.M.A., *Guides*, the section on which Dr. Weiss relied.⁶ Therefore, the medical evidence appellant submitted did not establish that appellant is entitled to an additional schedule award.

Appellant continues to allege that Dr. Bade, the Board’s initial impartial medical specialist, in his October 21, 2001 report supported an impairment rating of 35 percent of the right lower extremity. Dr. Bade, however, in his report did not explain how he correlated any impairment findings with the A.M.A., *Guides*. As he offered a mere conclusion regarding the degree of appellant’s impairment, without explaining the basis for each rating factor, the Office medical adviser properly advised the Office that Dr. Bade’s report could not be used to evaluate the impairment.⁷

As there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to more than a five percent permanent impairment to her right lower extremity.

CONCLUSION

The Board finds that appellant has no more than a five percent permanent impairment to her right lower extremity.

⁶ The other method by which impairment ratings based on pain are derived, upon which Dr. Weiss did not rely, is outlined in Table 18-4, page 576 of the A.M.A., *Guides*, which calculates impairment in terms of the degree of severity of pain or the degree to which the pain limits or interferes with activity. The medical evidence of record does not include any description or evaluation of how appellant’s pain complaints interfere with any activity. Rather, the medical evidence suggests that appellant is able to perform all of her work activities without accommodation.

⁷ See *Lela M. Shaw*, 51 ECAB 372 (2000).

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 13, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member