

In a decision dated January 3, 2003, the Office denied appellant's claim for continuation of pay because he failed to submit his claim within 30 days of the date of injury. By letter of the same date, the Office accepted appellant's claim for a right knee meniscus tear and left knee strain. Appellant underwent right knee anterior cruciate ligament (ACL) reconstruction and a partial lateral menisectomy on February 7, 2003.¹

On February 10, 2003 appellant filed a claim for compensation (Form CA-7) for the period February 10 through April 4, 2003 accompanied by a direct deposit form and medical records regarding his right knee condition. He submitted additional medical records relating to his right and left knee conditions including a September 11, 2003 letter from Dr. Michael R. Kilgore, a family practitioner, to Dr. William D. Snyder, his treating Board-certified orthopedic surgeon. Dr. Kilgore noted that appellant was evaluated on September 3, 2003 and provided a history of appellant's June 21, 2002 employment injury and medical treatment. On physical examination, he reported that appellant's knees were free of any signs of inflammation or infection. Dr. Kilgore noted that right knee range of motion for flexion was 120 degrees and extension was 0 degrees. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) 546, Table 17-33, he found that appellant had a two percent impairment of the right lower extremity based on a partial medial or lateral menisectomy, which constituted a one percent impairment of the whole person. He also found that appellant had a four percent impairment of the whole person for range of motion, which totaled a five percent impairment of the whole person. Dr. Kilgore stated that appellant reached maximum medical improvement on September 9, 2003. He instructed appellant to continue with home exercises, decrease his weight, swim and take oral anti-inflammatory medication when necessary. Further, he advised appellant that his pain would decrease within six to eight months.

On September 30, 2003 appellant filed a claim for a schedule award. The Office, on October 15, 2003, requested that an Office medical adviser review an accompanying statement of accepted facts and Dr. Kilgore's September 11, 2003 findings to determine the date appellant reached maximum medical improvement and the functional loss of use and percentage of impairment of his right lower extremity based on the fifth edition of the A.M.A., *Guides*.

On October 23, 2003 the Office medical adviser responded that he had reviewed the statement of accepted facts and appellant's findings.² The Office medical adviser stated that appellant reached maximum medical improvement on September 11, 2003, the date of

¹ Appellant returned to full-duty work on April 2, 2003.

² It appears that the Office medical adviser inadvertently stated that he reviewed Dr. Jimenez's findings, rather than Dr. Kilgore's findings as the record indicates that the only person named Jimenez is appellant. The Board finds that this mistake constitutes harmless error as the Office medical adviser correctly noted Dr. Kilgore's findings.

the evaluation.³ Further, the Office medical adviser noted Dr. Kilgore's findings that appellant was status post right knee ACL reconstruction and partial lateral meniscectomy, his right knee range of motion for flexion was 120 degrees, he had a 5 percent impairment of the whole person, which consisted of a 4 percent impairment of the whole person for limited knee range of motion and a 1 percent impairment of the whole person resulting from the 2 percent impairment, which was due to the meniscectomy. Based on the A.M.A., *Guides* 546, Table 17-33 and Dr. Kilgore's findings, the Office medical adviser determined that a right knee partial lateral meniscectomy constituted a two percent impairment of the right lower extremity. The Office medical adviser noted that the reported range of motion findings did not qualify for an impairment rating.

By decision dated March 18, 2004, the Office granted appellant a schedule award for a two percent permanent impairment of the right lower extremity based on the Office medical adviser's finding which was for 5.76 weeks.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ set forth the number of weeks of compensation payable to employees who sustain 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

In this case, appellant's attending physician, Dr. Kilgore, found that appellant reached maximum medical improvement on September 3, 2003 and that the right knee range of motion for flexion was 120 degrees and extension was 0 degrees. Utilizing the A.M.A., *Guides*, 546, Table 17-33, Dr. Kilgore determined that appellant had a two percent impairment of the right lower extremity, which constituted a one percent impairment of the whole person. He also found that appellant had a four percent impairment of the whole person for range of motion, totaling a five percent impairment of the whole person. Dr. Kilgore's finding that appellant had a five percent impairment of the whole person cannot be used as a basis for a schedule award as a schedule award is not payable for an impairment of the whole person.⁶ Applying the A.M.A.,

³ The Office medical adviser's statement that appellant reached maximum medical improvement on September 11, 2003, the date of his evaluation by Dr. Kilgore, rather than September 3, 2003 constitutes harmless error as Dr. Kilgore's report regarding the evaluation is dated September 11, 2003, which does not adversely affect the number of weeks of compensation to which appellant is entitled, 5.76 weeks for a 2 percent impairment of the right lower extremity. *See Jasper Witherspoon*, 26 ECAB 344, 346 (1975).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ 5 U.S.C. § 8107; *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

Guides to Dr. Kilgore's right knee range of motion findings, the Board finds that 120 degrees of flexion and 0 degrees of extension are not considered ratable impairments.⁷

The Office medical adviser utilized the findings provided by Dr. Kilgore and applied them to the tables of the A.M.A., *Guides* in determining that appellant had a two percent permanent impairment of the right lower extremity. The Office medical adviser found that appellant reached maximum medical improvement on September 11, 2003. In addition, the Office medical adviser determined that a right knee partial lateral meniscectomy constituted a two percent impairment of the right lower extremity per Table 17-33 of the A.M.A., *Guides* at page 346.

The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to Dr. Kilgore's September 11, 2003 findings and determined that appellant had a two percent permanent impairment of the right lower extremity. This evaluation conforms to Table 17-33 of the A.M.A., *Guides* and establishes that appellant has no more than a two percent permanent impairment of the right lower extremity.

CONCLUSION

The Board finds that appellant has failed to establish that he has more than a two percent permanent impairment of the right lower extremity for which he received a schedule award.

ORDER

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

Issued: September 30, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ A.M.A., *Guides* 536, Table 17-10 (impairment is provided when knee flexion is less than 110 degrees).