

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

RICHARD C. HYLTON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Las Vegas, NV, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 05-1444
Issued: December 19, 2005**

Appearances:
Richard C. Hylton, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On June 24, 2005 appellant filed an appeal of a June 7, 2005 merit decision of the Office of Workers' Compensation Programs, granting a schedule award for a 10 percent impairment of the left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision in this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he has more than a 10 percent impairment of the left lower extremity.

FACTUAL HISTORY

On November 25, 2001 appellant, a 58-year-old electrical technician, filed a traumatic injury claim alleging that he injured his left knee in the performance of his duties that date. The Office accepted the claim for left knee strain and authorized left knee arthroscopy for partial lateral and medial meniscectomy, partial synovectomy and chondroplasty of the patella, which occurred on February 27, 2004.

Appellant filed a claim for a schedule award on May 20, 2004.

The Office referred appellant, together with a statement of accepted facts and the entire medical record, to Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon, for a second opinion examination and an evaluation of permanent functional loss of use, of the left lower extremity. In a report dated July 8, 2004, he opined that appellant's date of maximum medical improvement was May 2004. Dr. Sherman's examination of appellant's knees revealed mild tenderness over the medial joint line of the left knee; right knee flexion was 0 to 150 degrees; and left knee flexion 0 to 140 degrees. He provided diagnoses of left knee strain, probably torn medial meniscus tear postarthroscopic surgery and chondromalacia status post arthroscopic surgery. Dr. Sherman reported objective findings, including a normal x-ray interpretation of the left knee, a negative both knees, positive McMurray's sign, negative Lachman's. Subjective complaints included limited motion of his knee and "aching pain over the medial aspect of the knee."

The Office forwarded the medical record to Dr. Leonard A. Simpson, an Office medical consultant, for review and determination of permanent functional loss of use, of the left lower extremity. In a report dated February 7, 2005, he summarized appellant's medical records. Dr. Simpson stated that a magnetic resonance imaging (MRI) scan of the left knee revealed a tear of the medial meniscus posterior horn and "a large Baker's cyst with some thinning of the anterior cruciate ligament. He summarized Dr. Sherman's second opinion evaluation, referring to his documentation of appellant's subjective complaints and objective findings. Dr. Simpson stated that the subjective complaints of pain would be between 61 and 80 percent pursuant to Table 16-10 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹ He further stated that he "would recommend a mean or a 70 [percent] grade of maximum 7 [percent] (femoral nerve), equivalent to a 4.9 or rounded off to a 5 [percent] impairment for the pain factors." Referring to Table 17-10, Dr. Simpson indicated that range of motion documented at 0/0 through 140/150 would be rated at 0 percent impairment. He added that the records indicated no left lower extremity atrophy or weakness for a 0 percent impairment. Dr. Simpson indicated that, under the diagnosis-based impairment, appellant had a 10 percent impairment of the left leg due to surgery for the meniscal tears. He noted that these impairment ratings could not be combined and as this method resulted in a higher percentage of impairment, it should be adopted. The Office medical consultant then concluded that appellant had a 10 percent impairment of the left leg and that the date of maximum medical improvement would have been reached no later than July 8, 2004.²

On June 7, 2005 the Office granted appellant a schedule award for a 10 percent loss of use, of the left lower extremity for a total of 28.80 weeks, to run from July 8, 2004 to January 25, 2005.

¹ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

² *Id.* at Table 17-2 at 526.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ sets 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 regulations as the appropriate standard for evaluating schedule losses.⁵ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

The Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.⁷

ANALYSIS

The Office accepted that appellant sustained a left knee injury for which he underwent arthroscopic surgery for partial lateral and medial meniscectomy, partial synovectomy and chondroplasty of the patella. The Office referred him to Dr. Sherman, who advised in a July 8, 2004 report, that appellant had reached maximum medical improvement as of May 2004 and provided his findings on examination of his left knee. However, he did not provide an impairment rating.

Dr. Sherman's report was reviewed by Dr. Simpson, an Office medical consultant, who, in a report dated February 7, 2005, found that maximum medical improvement had been reached on July 8, 2004 and properly referenced the fifth edition of the A.M.A., *Guides* and advised that, pursuant to Table 17-33, appellant was entitled to a 10 percent left lower extremity impairment. Dr. Simpson pointed out that this method of computing impairment, diagnosis-based estimate, was more advantageous to appellant as the impairment for pain resulted only in a five percent impairment.

The A.M.A., *Guides*, Chapter 17, provides impairment ratings of the lower extremities for diagnosis-based estimates, including specific disorders of the knee, such as a torn meniscus

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (2003).

⁶ FECA Bulletin No. 01-05 (issued January 29, 2001); see *Jesse Mendoza*, 54 ECAB ____ (Docket No. 03-1516, issued September 10, 2003).

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

or meniscectomy.⁸ Section 17.2j of the A.M.A., *Guides*⁹ discusses diagnosis-based impairments, and Table 17-33 indicates that a partial medial and lateral meniscectomy is equal to a 10 percent lower extremity impairment.¹⁰ In this case, the February 27, 2005 operative report establishes that appellant underwent a partial medial and lateral meniscectomy. As the report of Dr. Simpson, the Office medical adviser, constituted the only medical evidence of record that conformed with the A.M.A., *Guides*, the Board finds that he correctly determined that appellant was entitled to a 10 percent impairment of the left lower extremity for his partial medial and lateral meniscectomy and the medical evidence of record, therefore, does not establish that he was entitled to a schedule award greater than the 10 percent granted.¹¹

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he is entitled to greater than a 10 percent impairment of the left lower extremity.

⁸ *Philip A. Norulak*, 55 ECAB ____ (Docket No. 04-817, issued September 3, 2004).

⁹ A.M.A., *Guides*, *supra* note 1 at 545.

¹⁰ *Id.* at 546.

¹¹ The Board notes that appellant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 7, 2005 is affirmed.

Issued: December 19, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board