

On June 27, 2003 Dr. John Lange, a treating orthopedic surgeon, performed arthroscopy of the right knee with a partial medial and lateral meniscectomy and chondroplasty of the patellofemoral compartments. He diagnosed medial meniscal tear with chondromalacia involving the medial femoral condyle. On August 8, 2003 Dr. Lange performed left knee arthroscopy with a partial medial and lateral meniscectomy and chondroplasty involving the inferior pole of the patella. He diagnosed chondromalacia of the medial and lateral femoral and tibial condyle, a tear of the medial meniscus and a fraying of the lateral meniscus.

Appellant was compensated for appropriate periods of wage loss and was released to return to regular duty on September 3, 2003. Dr. Lange continued to submit reports noting his status.

On November 26, 2003 appellant filed a claim for a schedule award.

On May 27, 2005 the Office requested that the medical adviser reevaluate appellant's bilateral knee conditions for an impairment determination. On June 10, 2005 the Office medical adviser again noted that appellant had undergone partial medial and partial lateral meniscectomies of the right and left knee, which represented a 10 percent impairment of each knee according to Table 17-33, page 546, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

By decision dated June 24, 2005, granted a schedule award for 10 percent impairment of both the right and left lower extremities. The date of maximum medical improvement was November 26, 2003 and the award ran for 57.6 weeks, from November 26, 2003 to January 2, 2005.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ 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* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

ANALYSIS

The record includes surgical reports from Dr. Lange, appellant's treating orthopedic surgeon. On June 27, 2003 Dr. Lange performed a right knee meniscectomy and chondroplasty

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Willie C. Howard*, 55 ECAB ____ (Docket No. 04-342 & 04-464, issued May 27, 2004).

of the right patellofemoral and noted Grade 3 chondromalacia in the femoral groove and Grade 3 in the patella. In an August 8, 2003 report, Dr. Lange stated that he had performed a left knee meniscectomy and chondroplasty of the left patella and noted Grade 3 chondromalacia of the medial femoral condyle, in the central plateau and in the patella.

On June 10, 2005 the medical adviser properly utilized the findings reported by Dr. Lange and utilized the A.M.A., *Guides* (5th ed. 2001), to determine an impairment rating. He noted that appellant underwent partial medial and lateral meniscectomies of both the right and left knees, which represented 10 percent impairment of each knee according to Table 17-33, page 546 of the A.M.A., *Guides*.⁵ The Office medical adviser properly applied the A.M.A., *Guides* to the medical evidence and found 10 percent impairment of each lower extremity based on appellant's bilateral knee condition. There is no medical evidence in conformance with the A.M.A., *Guides* to establish more than a 10 percent impairment of the right lower and left lower extremities.

On appeal, appellant contends that the schedule award percentage is inadequate noting that he experiences pain and limitation of motion to both knees, noting the impact of the impairment to do yard work and recreational activities. A schedule award under the Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as prescribed in the statute.⁶ The Act provides that for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks compensation. In the instant case, appellant was found to have a 10 percent impairment to each knee. As such, he is entitled to 10 percent of 288 weeks of compensation, is 28.8 weeks. For both knees, this would be 57.6 weeks of compensation. The Office medical adviser utilized Table 17-33 which rates impairment on the basis of a diagnosis rather than on physical findings on examination. For a partial meniscectomy of the medial and lateral meniscus, the impairment is 10 percent of the lower extremity. Appellant has not introduced medical evidence pertaining to his sensory (pain) or limitation of knee range of motion to establish greater impairment than that provided at Table 17-33. Moreover, section 8107 does not take into account the effect the impairment may have on sports, hobbies or other lifestyle activities.⁷

CONCLUSION

The Board finds that appellant has failed to establish that he has more than a 10 percent impairment of each lower extremity.

⁵ A.M.A., *Guides* 546, Table 17-33.

⁶ 5 U.S.C. § 8107.

⁷ See *Ruben France* 54 ECAB ____ (Docket No. 02-2194, issued March 21, 2003); *Timothy J. McGuire*, 34 ECAB 189 (1982).

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board