



On February 21, 2003 appellant filed a claim for a schedule award. He submitted a March 6, 2002 report from Dr. Douglas M. Burns, a Board-certified physiatrist, who diagnosed a “left knee injury with anterior cruciate ligament (ACL) involvement with approximate moderate anterior cruciate laxity.” Physical findings included full range of motion in the left knee “with some slight discomfort at the end range,” a right thigh measurement of 43 centimeters, a left thigh measurement of 41 centimeters, “no significant laxity with the medial lateral, anterior or posterior testing,” and “menisci compression testing without complaints.” A neurologic examination revealed bilaterally strength of 5/5 in the lower extremities, “some local decreased sensation at the parasurgical region but no other peripheral nerve distribution changes,” his gait was not abnormal and “reflexes 2 and symmetric at the patella and ankle jerks regions bilaterally.” Based upon the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>1</sup> Dr. Burns found that appellant had a 17 percent impairment of the left lower extremity due to “moderate anterior cruciate laxity.”

On August 15, 2003 the Office referred the case record to an Office medical adviser for evaluation as to the extent of impairment of the left lower extremity in accordance with the fifth edition of the A.M.A., *Guides*. In a report dated August 27, 2003, the Office medical adviser determined that appellant had reached maximum medical improvement on March 5, 2002. He determined that appellant sustained a seven percent impairment of the left lower extremity.<sup>2</sup> In reaching this determination, he noted “laxity of cruciate ligament not noted in exam[ination] but considering the symptoms mild laxity is reasonable.”

In a decision dated November 12, 2003, the Office granted appellant a schedule award for seven percent impairment of the left lower extremity. The schedule award ran for the period March 5, 2002 to July 24, 2003.

On November 29, 2003 appellant requested a hearing based upon a review of the written record.

In a decision dated April 6, 2004, the Office hearing representative set aside the November 12, 2003 schedule award decision and remanded the case to for the Office medical adviser to calculate appellant’s impairment rating based upon the physical examination findings.

In a report dated April 20, 2004, a second Office medical adviser reviewed the evidence and determined that appellant had eight percent impairment of the left lower extremity. The Office medical adviser concluded that appellant was entitled to an additional one percent impairment for atrophy to his left thigh. With regard to appellant’s left knee laxity, he noted there was no supported physical evidence and recommended asking Dr. Burns “about the discrepancy between his impairment rating for moderate anterior cruciate laxity of the left knee and his lack of documentation of finding laxity on his physical examination.”

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>2</sup> *See id.* at 546, Table 17-33.

By decision dated May 13, 2004, the Office granted appellant a schedule award for an additional one percent impairment of the left lower extremity. The schedule award was granted for the period July 25 to August 14, 2003.<sup>3</sup>

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulation<sup>5</sup> 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 regulation as the appropriate standard for evaluating schedule losses.<sup>6</sup>

### **ANALYSIS**

The Office accepted appellant's claim for left knee strain and authorized left knee arthroscopy and ACL reconstruction surgery. In a report dated March 6, 2002, Dr. Burns diagnosed a "left knee injury with ACL involvement with approximate moderate anterior cruciate laxity." Physical findings included full range of motion in the left knee "with some slight discomfort at the end range," a right thigh measurement of 43 centimeters, a left thigh measurement of 41 centimeters, "no significant laxity with the medial lateral, anterior or posterior testing," and "menisci compression testing without complaints." Based upon the fifth edition of the A.M.A., *Guides* Dr. Burns concluded that appellant had a 17 percent impairment of the left lower extremity due to appellant's "moderate anterior cruciate laxity."

In a report dated August 27, 2003, an Office medical adviser determined that appellant sustained a seven percent impairment of the left lower extremity. In support of this conclusion, the Office medical adviser noted, "laxity of cruciate ligament not noted in exam[ination] but considering the symptoms mild laxity is reasonable."

In a report dated April 20, 2004, a second Office medical adviser reviewed the evidence pursuant to the instructions from the Office hearing representative. He concluded that appellant was entitled to an additional one percent impairment for atrophy to his left thigh and had a total eight percent impairment of the left leg. With regard to appellant's left knee laxity, he noted there was no supporting physical evidence and recommended asking Dr. Burns "about the discrepancy between his impairment rating for moderate anterior cruciate laxity of the left knee and his lack of documentation of finding laxity on his physical exam[ination]." The record

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<sup>3</sup> There was a typographical error and the year should be 2003 not 2002.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> See *id.*; *Jacqueline S. Harris*, 54 ECAB \_\_\_\_ (Docket No. 02-203, issued October 4, 2002).

contains no evidence that the Office followed the Office medical adviser's recommendation to request clarification from Dr. Burns.

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter.<sup>7</sup> While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>8</sup> Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.<sup>9</sup>

The Board, will remand the case for further development. On remand the Office should obtain clarification from Dr. Burns regarding whether appellant has moderate left knee anterior cruciate laxity. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

### **CONCLUSION**

The Board finds that the case is not in posture for decision regarding the extent of permanent impairment to appellant's left lower extremity. The case will be remanded to the Office for further consideration of the claim consistent with this decision.

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<sup>7</sup> *Vanessa Young*, 55 ECAB \_\_\_\_ (Docket No. 04-562, issued June 22, 2004).

<sup>8</sup> *Richard E. Simpson*, 55 ECAB \_\_\_\_ (Docket No. 04-14, issued May 3, 2004).

<sup>9</sup> *Melvin James*, 55 ECAB \_\_\_\_ (Docket No. 03-2140, issued March 25, 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 13, 2004 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: January 19, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member