

anterior cruciate ligament surgery on September 11, 2001. The Office accepted the claim for a right knee sprain/strain.

In a letter dated May 8, 2003, the Office requested that appellant's attending orthopedic surgeon, Dr. Eddie Matsu, submit a report with an assessment as to permanent impairment. The record contains a June 10, 2003 report with a letterhead stating Occupational Services of Houston and concluding with the names of an occupational therapist and Dr. Matsu.¹ The report is not signed by either the occupational therapist or Dr. Matsu; it provided an opinion that appellant had a 59 percent right leg permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). In a form report² dated June 30, 2003, Dr. Matsu checked a box that he was a "doctor selected by treating doctor acting in place of treating doctor" and he reported a date of examination of June 10, 2003. Dr. Matsu also checked a box that he certified that appellant had a whole person permanent impairment of 24 percent under the fourth edition of the A.M.A., *Guides*.³

The Office referred the case record to an Office medical adviser, who opined that further development of the record was required. The medical adviser noted that the accepted condition was sprain/strain, and if appellant did have arthritis aggravated by federal employment, radiographic study was needed to measure cartilage intervals. The Office referred appellant, medical records and a statement of accepted facts to Dr. Bernard Albina, a Board-certified orthopedic surgeon.

In a report dated October 14, 2003, Dr. Albina provided a history and results on examination. He diagnosed as employment related a tear of the anterior cruciate ligament and aggravation of preexisting degenerative arthritis of the right knee. Dr. Albina stated that x-rays showed a cartilage interval of one millimeter, for a 25 percent leg impairment under Table 17-31 of the A.M.A., *Guides*. He also found a seven percent leg impairment under Table 17-33 for a mild cruciate laxity. Dr. Albina found that using the Combined Values Chart the total impairment was 31 percent.

An Office medical adviser concurred with Dr. Albina's findings in a November 19, 2003 report. He noted, however, that combining 25 percent and 7 percent under the Combined Values Chart results in a 30 percent leg impairment.

In a decision dated January 6, 2004, the Office issued a schedule award for a 30 percent permanent impairment to the right leg. The period of the award was 86.4 weeks commencing October 14, 2003.

Appellant requested a hearing, which was held on July 19, 2004. By decision dated November 5, 2004, the hearing representative affirmed the January 6, 2004 decision.

¹ The report indicated that testing was done by the occupational therapist and Dr. Matsu was the referral physician.

² The report is a state workers' compensation form report.

³ The form enumerated only the third or fourth editions of the A.M.A., *Guides*.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.⁶

ANALYSIS

In the present case, the record contains a June 10, 2003 report with an opinion that appellant had a 59 percent permanent impairment to his right leg based on arthritis and anterior cruciate laxity. This report, however, was apparently prepared by an occupational therapist and was not signed by a physician. To be of probative value, a medical report must be from a physician under the Act. An occupational therapist is not a physician as defined by 5 U.S.C. § 8101(2).⁷ The June 10, 2003 report was not signed by a physician and is of no probative value.⁸ Dr. Matsu completed a form report on June 30, 2003, but he did not discuss examination findings or provide a reasoned medical opinion as to the degree of permanent impairment under the A.M.A., *Guides*. The form report checks a box that appellant had a 24 percent whole person impairment, which is of little probative value in determining an impairment under the Act.⁹

The second opinion physician, Dr. Albina, provided results on examination and a reasoned opinion as to the degree of permanent impairment. He indicated that x-rays showed a one millimeter cartilage interval, and he identified Table 17-31, which provides impairments for arthritis based on cartilage intervals.¹⁰ A one millimeter interval is a 25 percent impairment under Table 17-31. With respect to the anterior cruciate ligament, Table 17-33 provides

⁴ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁵ *A. George Lampo*, 45 ECAB 441 (1994).

⁶ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁷ *See James Robinson, Jr.*, 53 ECAB 417, 419 (2002).

⁸ *Thomas L. Agee*, 56 ECAB ____ (Docket No. 05-335, issued April 19, 1985); *Richard F. Williams*, 55 ECAB ____ (Docket No. 03-1176, issued February 23, 2004); *Merton J. Sills*, 39 ECAB 572 (1988).

⁹ The Board notes that the Act does not provide for permanent impairment to the whole person. *Janae J. Triplette*, 54 ECAB ____ (Docket No. 03-1545, issued September 4, 2003).

¹⁰ A.M.A., *Guides* 544, Table 17-31.

impairments based on cruciate laxity and other diagnosed leg conditions.¹¹ A mild laxity results in a seven percent leg impairment.

The impairments for arthritis and cruciate laxity are combined using the Combined Values Chart.¹² As noted by the Office medical adviser, combining 25 percent and 7 percent results in a 30 percent leg impairment.¹³ The Board therefore finds that the medical evidence of record supports a 30 percent permanent impairment to the right leg. Appellant did not submit probative medical evidence establishing a greater impairment.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant's permanent impairment was 30 percent, he is entitled to 30 percent of 288 weeks, or 86.4 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.¹⁴ In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Albina. The award therefore properly runs for 86.4 weeks commencing on October 14, 2003.

CONCLUSION

The Board finds that the probative medical evidence of record does not establish more than a 30 percent permanent impairment to the right leg, for which appellant received a schedule award on January 6, 2004.

¹¹ *Id.* at 546, Table 17-33.

¹² When more than one rating method is used, the individual impairments are combined using the Combined Values Chart. *Id.* at 527, 604.

¹³ *Id.* at 604.

¹⁴ *Albert Valverde*, 36 ECAB 233, 237 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 5, 2004 is affirmed.

Issued: June 1, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member