

FACTUAL HISTORY

This is the third appeal in this case. In a March 15, 2000 decision, the Board reversed the Office's January 29, 1998 decision terminating appellant's compensation benefits effective February 18, 1997.¹ The Office had attributed the weight of the medical evidence to the opinion of Dr. Alexander Sapega, the impartial medical examiner. The Board found that Dr. Sapega's medical report was based on an inaccurate factual history and was insufficient to resolve the conflict in medical opinion.

In a decision dated February 19, 2003, the Board set aside the Office's June 21, 2001 and February 2, 2002 decisions denying appellant's claim for a schedule award and remanded the case for further development.² The Board found a conflict of medical opinion between the report of Dr. Howard Zeidman, an Office referral physician, who opined that appellant's left lower extremity impairment was not employment related with that of appellant's treating physician, Dr. Weiss, who opined that appellant had a total left lower extremity impairment of 31 percent causally related to the work-related injury of February 13, 1995. The facts and the circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.

On remand, the Office prepared a statement of accepted facts and referred appellant, together with the case record and a list of questions, to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for an impartial medical examination. He was asked to provide an opinion on the extent of any permanent impairment to appellant's left lower extremity causally related to the February 13, 1995 employment injury.

In a July 11, 2003 report, Dr. Askin noted appellant's past and present medical history, including the work injury and the two surgical procedures following the February 13, 1995 injury. Dr. Askin provided his findings on examination and diagnosed advanced osteoarthritis of the left knee. He noted that appellant had reached maximum medical improvement from the February 13, 1995 injury and opined that, while there was a left knee impairment, he was not able to establish a causal relationship between appellant's left knee osteoarthritis and the February 13, 1995 injury. Dr. Askin acknowledged that appellant had experienced a painful left knee contusion, but opined that any pain reasonably attributed to the February 13, 1995 injury was not a material alteration or aggravation of his baseline knee condition. He stated that the Veterans Administration records memorialized preexisting left knee complaints and disability and that Dr. Krasnick's June 12, 1995 operative report offered no indicium of acute change or trauma, such as blood staining, hemarthrosis, or acute osteochondritis dissecans. Dr. Askin further stated that it was not conceptually correct to assert that the painful event of February 13, 1995 necessitated surgery as arthroscopic surgery had not been proven to be an effective strategy for osteoarthritis and there were other treatments for an arthritic knee joint which were more effective. Any treatment of appellant's tricompartmental knee arthritis was addressing a baseline condition, not one caused by the accepted injury. Accordingly, Dr. Askin opined that there was no present injury induced impairment or material aggravation of appellant's underlying condition

¹ 51 ECAB 369 (2000).

² Docket No. 02-1548 (issued February 19, 2003).

caused by the February 13, 1995 injury. He further opined that any permanent residuals were related to a nonjob-related factor and/or a preexisting condition and did not result in an impairment rating.

By decision dated August 8, 2003, the Office denied appellant's claim for a schedule award as the evidence did not support that the permanent impairment to his left lower extremity was a result of the work-related injury of February 13, 1995.

On August 15, 2003 appellant requested an oral hearing, which was held on March 18, 2004. By decision dated June 4, 2004, an Office hearing representative affirmed the August 8, 2003 decision.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work, for which compensation is claimed is causally related to the employment injury.⁴ Causal relation is a medical question that can generally be resolved only by medical opinion evidence.⁵ The medical evidence required is generally rationalized medical opinion evidence, which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶ Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that the condition was caused by his employment is sufficient to establish a causal relationship.⁷

Section 8107 of the 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.⁸ The schedule award provision of the Act⁹ and its implementing federal regulation¹⁰ set 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

³ 5 U.S.C. §§ 8101-8193.

⁴ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

⁵ *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *David M. Ibarra*, 48 ECAB 218 (1996).

⁷ *Charles E. Evans*, 48 ECAB 692 (1997).

⁸ 5 U.S.C. § 8107(a).

⁹ 5 U.S.C. § 8107.

¹⁰ 20 C.F.R. § 10.404.

justice under the law to all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) as the uniform standard applicable to all claimants.¹¹

ANALYSIS

The Board notes that, before application of the A.M.A., *Guides*, the Office must review appellant's entitlement to a schedule award by determining whether that the impairment of the scheduled member is causally related to the alleged work injury.¹² The Office referred appellant to Dr. Askin, a Board-certified orthopedic surgeon, for an impartial medical examination and to render an opinion on the issue of whether any permanent impairment was causally related to the February 13, 1995 employment injury, accepted a left knee contusion. In its prior decision, the Board indicated that the conflict regarding whether appellant was entitled to a schedule award involved whether appellant's current left knee condition was due to a preexisting condition or the accepted employment injury of February 1995.

In this case, Dr. Askin opined, after examining appellant and the entire medical record, that appellant's left knee impairment was not related to the employment injury of February 13, 1995. He noted that the June 12, 1995 operative report showed no indication of any acute change or trauma and there was no material alteration or aggravation of his underlying osteoarthritis. He discounted that the injury of February 13, 1995 had necessitated arthroscopic surgery and that surgery was merely addressing the baseline condition; osteoarthritis not caused or contributed to by the event of February 13, 1995. Accordingly, Dr. Askin opined that any permanent residuals were related to appellant's preexisting condition and did not warrant an impairment rating. Dr. Askin conducted a thorough examination and found no basis on which to attribute any impairment to the 1995 employment-related left knee contusion.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹³ Dr. Askin's medical opinion is based on a proper background and is sufficiently well rationalized. His opinion that appellant's left lower extremity impairment was not related or contributed to by the employment injury of February 13, 1995 is afforded the special weight given to an impartial medical specialist.¹⁴ Dr. Askin resolved the issue of whether appellant had any permanent impairment and the subsequent surgical procedures causally related to the February 13, 1995 employment injury as he found that appellant's left knee condition was not causally related to the employment injury. In *Lela M. Shaw*,¹⁵ the employee sustained an injury accepted for a contusion of the right leg.

¹¹ *Id.*

¹² See *Veronica Williams*, 56 ECAB ___ (Docket No. 04-2120, issued February 23, 2005) (a schedule award can only be paid for a condition related to an employment injury).

¹³ See *Roger Dingess*, 47 ECAB 123 (1995).

¹⁴ *Id.*

¹⁵ 51 ECAB 372 (2000).

Her claim for a schedule award was denied as then medical evidence of record was not sufficient to establish that any permanent impairment of her right leg was due to the accepted injury. The Board noted that in determining the amount of schedule award for a member of the body that sustains an employment-related permanent impairment, preexisting impairments are to be included.¹⁶ The Board found that the medical evidence of record did not explain how the employee's preexisting condition was aggravated by the accepted injury or state that there was any permanent impairment as a consequence of both the preexisting condition and the employment injury. In this case, the medical report of Dr. Askin ruled out any contribution to appellant's preexisting osteoarthritis due to the accepted employment injury. Therefore, appellant's argument that the impartial medical examiner did not address the issue of schedule award entitlement, although evidence of left lower extremity impairment was noted, it is not relevant as it has not been established that his left knee impairment is causally related in any way to his accepted injury.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he has any permanent impairment of his left lower extremity causally related to his February 13, 1995 employment injury. Therefore, he is not entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 4, 2004 is affirmed.

Issued: March 21, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁶ *Id.* at 374; see also *Donald A. Myers*, 22 ECAB 49 (1970).