

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

_____)	
ANTONIO TRUJILLO, Appellant)	
)	
and)	Docket No. 04-2305
)	Issued: March 1, 2005
U.S. POSTAL SERVICE, POST OFFICE,)	
Pueblo, CO, Employer)	
_____)	

Appearances:
Antonio Trujillo, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 22, 2004 appellant filed an appeal of a schedule award decision of the Office of Workers' Compensation Programs dated September 7, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he has more than a two percent impairment of the right lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On September 10, 2003 appellant, then a 46-year-old letter carrier, filed a Form CA-1, claim for compensation, alleging that he tripped and twisted his right knee while carrying a mail tray at work that day. He did not stop work. Appellant came under the care of Dr. Michael A. Dallenbach, a general surgeon. An October 21, 2003 magnetic resonance imaging (MRI) scan of the right knee was interpreted by Dr. Bryan Nolt, Board-certified in diagnostic radiology, as

normal. On January 16, 2004 the Office accepted that appellant sustained an employment-related right patellar sprain and left shin contusion.

Appellant was referred to Dr. David S. Matthews, Board-certified in orthopedic surgery, who noted appellant's complaints of pain and patellofemoral crepitus on examination. He advised that conservative treatment had failed and recommended arthroscopic evaluation. On March 29, 2004 Dr. Matthews performed arthroscopic chondroplasty. At surgery the physician noted a one centimeter (cm) patella lesion and a two cm medial femoral condyle lesion. He found the rest of the medial compartment and the lateral compartment to be normal. The postoperative diagnosis was articular cartilage damage of the patella and medial femoral condyle of the right knee.

Appellant continued under the care of Drs. Matthews and Dallenbach, and in treatment notes dated June 22 and 25, 2004, they respectively advised that appellant had reached maximum medical improvement. In a report dated July 15, 2004, Dr. Dallenbach provided an impairment rating under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).¹ His diagnostic impression was chronic right knee pain, status post right knee arthroscopy with arthroscopic chondroplasty. Dr. Dallenbach found normal range of motion and recommended no further medical treatment, opining that maximum medical improvement had been reached. He reported the surgical findings, noting that the knee area had been debrided back to stable cartilage. Dr. Dallenbach concluded that, pursuant to Table 17-33 of the A.M.A., *Guides*, appellant was entitled to two percent right lower extremity impairment.

The Office referred the medical record, including Dr. Dallenbach's July 15, 2004 report, to an Office medical adviser for an opinion regarding appellant's entitlement to a schedule award. In a report dated August 25, 2004, the Office medical adviser noted his review of Dr. Dallenbach's impairment rating. He opined that maximum medical improvement had been reached on June 25, 2004 and agreed with Dr. Dallenbach's analysis and impairment rating.

On August 30, 2004 appellant filed a claim for a schedule award, and by decision dated September 7, 2004, the Office granted him a schedule award for a 2 percent permanent impairment of the right lower extremity, for a total of 5.76 weeks, to run from June 25 to August 4, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ 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. The Act, however, does not specify the manner in which the percentage of loss shall

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

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.404.

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.⁴

ANALYSIS

In this case, the Office accepted that appellant sustained a right knee injury for which he underwent arthroscopic surgery. His attending surgeon, Dr. Dallenbach, advised on June 25, 2004 that appellant had reached maximum medical improvement and provided an impairment rating dated July 15, 2004. In that report he properly referenced the fifth edition of the A.M.A., *Guides* and advised that, pursuant to Table 17-33, appellant was entitled to a two percent right lower extremity impairment. Dr. Dallenbach's July 15, 2004 report was reviewed by an Office medical adviser who, in a report dated August 25, 2004, found that maximum medical improvement had been reached on June 25, 2004 and agreed with Dr. Dallenbach's findings and conclusion that appellant had a two percent right lower extremity impairment.

The A.M.A., *Guides*, Chapter 17, provides multiple grading schemes and procedures for determining the impairment of a lower extremity due to gait derangement, muscle atrophy, muscle weakness, arthritis, nerve deficits and other specific pathologies. The A.M.A., *Guides* also provides impairment ratings of the lower extremities for diagnosis-based estimates, including specific disorders of the knee, such as a torn meniscus or meniscectomy.⁵ Section 17.2j of the A.M.A., *Guides*⁶ discusses diagnosis-based impairments, and Table 17-33 indicates that a partial medial meniscectomy is equal to two percent lower extremity impairment.⁷ When a diagnosis-based impairment rating is applied, it is generally not appropriate to calculate additional impairment based on anatomic or functional based methods.⁸ In this case, the medical evidence of record establishes that appellant underwent a partial medial meniscectomy. As their reports constituted the only medical evidence of record that conformed with the A.M.A., *Guides*, the Board finds that Dr. Dallenbach and the Office medical adviser correctly determined that appellant was entitled to a two percent impairment of the right lower extremity for his partial medial meniscectomy, and the medical evidence of record, therefore, does not establish that appellant was entitled to a schedule award greater than the two percent granted.⁹

⁴ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁵ *Philip A. Norulak*, 55 ECAB ____ (Docket No. 04-817, issued September 3, 2004).

⁶ A.M.A., *Guides*, *supra* note 1 at 545.

⁷ *Id.* at 546.

⁸ *Derrick C. Miller*, 54 ECAB ____ (Docket No. 02-140, issued December 23, 2002).

⁹ 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 permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

CONCLUSION

The Board finds that appellant has not established that he is entitled to greater than a two percent impairment of the right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 7, 2004 be affirmed.

Issued: March 1, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member