

accepted his claim for contusion and internal derangement of the left knee.¹ On July 26, 1992 an Office medical adviser reviewed the medical evidence of record. He reported that appellant reached maximum medical improvement by May 4, 1992 and found a 25 percent impairment due to a torn medial and lateral meniscus as well as a 7 percent impairment due to arthritis. On September 17, 1992 the Office issued a schedule award for a 30 percent permanent impairment of the left lower extremity.²

Appellant sustained another injury on August 17, 1994 when his left foot slipped, causing him to feel like his left knee slipped out of joint. The Office accepted his claim for left knee strain and tear of the medial meniscus.³ On April 10, 1997 appellant underwent an authorized anterior cruciate ligament reconstruction and partial medial meniscectomy.

On August 22, 1997 Dr. John W. Johnson, an attending orthopedic surgeon, reported that appellant had achieved maximal medical improvement. He noted that appellant still had some mild laxity after a partial medial meniscectomy with an anterior cruciate reconstruction, which according to the A.M.A., *Guides* would give him an estimated impairment to the left lower extremity of 10 percent.

In a February 15, 1999 report, Dr. Eugene L. Heiman, a Board-certified orthopedic surgeon, reported that appellant had a three percent impairment of the “whole person” for mild anterior cruciate ligament laxity. An Office medical adviser reviewed the record and reported that a diagnosis of mild cruciate ligament laxity represented a three percent impairment of the “whole person” or a seven percent impairment of the lower extremity.⁴

On March 15, 1999 the Office issued a schedule award for a seven percent permanent impairment of the left lower extremity.

On August 25, 1999 Dr. Heiman examined appellant from an arthritis perspective and reported negative findings on physical examination and mild lateral joint space narrowing on x-ray: “It is impossible for me to make any definitive statements about the arthritis in his knee, since x-ray findings are minimal and I did not do his original surgery to see how extensive the cartilage damage was and only his operating surgeon could do that.”

In a decision dated May 8, 2000, the Office reviewed the merits of appellant’s claim and denied modification of the March 15, 1999 schedule award.

On January 24, 2001 the Office explained to appellant that it should not have issued the March 15, 1999 schedule award for a 7 percent permanent impairment of the left lower extremity

¹ OWCP File No. A25-371232. The Office nonfatal summary form indicates that it also accepted appellant’s claim for chondromalacia, left patella.

² According to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* 254 (3^d ed., rev. 1990) (Combined Values Chart), a 25 percent impairment combines with a 7 percent impairment for a total impairment of 30 percent.

³ OWCP File No. A25-464213.

⁴ A.M.A., *Guides* 85 (4th ed. 1993) (Table 64).

because it had already issued a schedule award for a 30 percent permanent impairment of the same extremity; not only did the later award not show an increase in impairment over the earlier award, it showed an actual improvement. The Office determine that the March 15, 1999 schedule award created an overpayment of compensation, which it recovered by deducting the full amount from a schedule award owed for the left upper extremity.⁵

Appellant requested reconsideration, arguing that he erroneously received a schedule award for a 3 percent impairment and should have received a rating of 10 percent, as per the operating surgeon, Dr. Johnson, because the surgeon was in a better position to determine the permanent damage.

In a decision dated September 29, 2004, the Office reviewed the merits of appellant's claim and determined that appellant was not entitled to a schedule award for an increased impairment of the left lower extremity.⁶

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act⁷ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.⁸ Section 8107 provides that, if there is permanent disability involving the loss or loss of use of a scheduled member or function of the body, the claimant is entitled to a schedule award.⁹ The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.¹⁰

ANALYSIS

Appellant based his request for reconsideration, as he argued on appeal, on the relative merits of the estimates reported by Dr. Johnson and Dr. Heiman. He notes that Dr. Johnson was the physician who operated on his knee and was in a better position to judge impairment, particularly from arthritis. Dr. Heiman, he contends, was unfamiliar with the A.M.A., *Guides* and relied on an evaluation from a technician. None of appellant's arguments, however, addresses the primary issue in this case: On September 17, 1992 he received a schedule award for a 30 percent permanent impairment of the left lower extremity. Unlike the schedule award

⁵ OWCP File No. 160347092. The Board has no jurisdiction to review this matter.

⁶ Because appellant submitted a June 20, 2002 report from Dr. Mark J. Rosen concerning left shoulder pain, the Office assumed appellant was also seeking an increased award for the left upper extremity. As appellant made clear on appeal, his request for reconsideration dealt only with the schedule award he received for his left lower extremity.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁹ 5 U.S.C. § 8107(a). The Act does not authorize the payment of schedule awards for the permanent impairment of the "whole person." *Ernest P. Govednick*, 27 ECAB 77 (1975).

¹⁰ 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

issued on March 15, 1999 for a seven percent impairment, the Office has never indicated that this decision was issued in error. The Office has compensated appellant for a 30 percent impairment to his left lower extremity, an impairment that is regarded to be permanent in nature. To establish that he is entitled to schedule award compensation for more than he has already received, appellant must demonstrate that the employment-related impairment to his left lower extremity is greater than 30 percent. Nothing he has submitted or argued demonstrates this and appellant has made no showing that he is entitled to an increased schedule award.

The Board notes that, when he reported maximum medical improvement on August 22, 1997, Dr. Johnson noted mild laxity after a partial medial meniscectomy and anterior cruciate reconstruction. According to the current edition of the A.M.A., *Guides*, a partial medial meniscectomy represents a two percent impairment of the lower extremity,¹¹ and mild cruciate ligament laxity represents a seven percent impairment.¹² Dr. Johnson's August 22, 1997 report, therefore, supports no more than a total of nine percent impairment of the left lower extremity. For his part, Dr. Heiman avoided rating impairment due to arthritis. His finding of mild lateral joint space narrowing on x-ray gives no cartilage interval necessary to determine arthritis impairment under Table 17-31, page 544. But the interval would have to be nearly nonexistent, not just "mild," to justify any increase in appellant's schedule award, and even then, the increase would amount to one or two percent.

To establish entitlement to additional compensation, appellant must submit an impairment rating properly based on the current edition of the A.M.A., *Guides* showing that he has more than a 30 percent permanent impairment of the left lower extremity causally related to his federal employment. Absent such evidence, he has not met his burden of proof.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he has more than a 30 percent permanent impairment of his left lower extremity causally related to his federal employment. He is not entitled to an increased schedule award.

¹¹ A.M.A., *Guides* 546 (Table 17-33).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member