

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

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**THINES ROBINSON, JR., Appellant**

**and**

**DEPARTMENT OF JUSTICE, FEDERAL  
BUREAU OF INVESTIGATION,  
Washington, DC, Employer**

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**Docket No. 06-315  
Issued: April 21, 2006**

*Appearances:*  
*Thines Robinson, Jr., pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

*Before:*

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 21, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 13, 2005 finding that appellant was entitled to a schedule award for a 16 percent impairment of his right lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

**ISSUE**

The issue is whether appellant has more than a 16 percent impairment of his right lower extremity, for which he received a schedule award.

**FACTUAL HISTORY**

On July 12, 2002 appellant, then a 46-year-old special agent, filed a traumatic injury claim alleging that, while participating in an employer-approved basketball game, his right knee "popped out of place." The Office accepted appellant's claim for right knee dislocation,

cartilage tear and tendon rupture. On January 3, 2003 appellant underwent a right knee arthroscopy and right knee partial lateral meniscectomy. On November 5, 2003 appellant underwent a right quadriceps repair.

In a medical report dated June 28, 2004, Dr. Colin Eakin, a Board-certified orthopedic surgeon, noted that appellant was now seven months post reconstructive surgery for his quadriceps mechanism, was doing well with no pain and good strength and had returned to a fairly active lifestyle. He noted a range of motion of 0 to 115 degrees. Dr. Eakin indicated that appellant was now permanent and stationary. He further stated, "His residual deficit is as follows: range of motion 70 percent normal, strength 75 percent normal, pain 100 percent normal, swelling 100 percent normal."

On July 21, 2004 the Office referred the record to an Office medical examiner for evaluation of permanent functional loss of use of the right lower extremity. In a report dated July 26, 2004, the Office medical adviser stated:

"From review of the medical record, the following diagnoses have been established: (1) Status post right knee arthroscopy with lysis of adhesions, lateral release with partial lateral meniscectomy, January 31, 2003; and (2) Status post right quadriceps tendon repair with reconstruction of extensor mechanism, November 5, 2003.

"The Schedule Award is being calculated utilizing the [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001)].

"For the purposes of Schedule Award, the claimant has Grade 3 pain/decreased sensation that interferes with some activity 60 percent (Table 16-10/[p]age 482) of the femoral nerve quadriceps muscle [7] (Table 17-37/[p]age 552), which results in 4 percent impairment of the right lower extremity for pain that interferes with some activity. The claimant also has 12 percent impairment for residual quadriceps weakness (Table 17-8/[p]age 532). Utilizing combined values for 4 percent impairment of the right lower extremity for pain that interferes with function and 12 percent for quadriceps weakness, this results in 16 percent impairment of the right lower extremity.

*"As such, the claimant has 16 percent impairment of the right lower extremity. The 16 percent impairment of the right lower extremity is the sole impairment of the right lower extremity resulting from the accepted work injury of July 12, 2002. The date of maximum medical improvement is June 28, 2004, when the claimant was felt to have reached a permanent and stationary status by his treating physician, Dr. Eakin."* (Emphasis in the original.)

By decision dated August 17, 2004, the Office issued a schedule award for a 16 percent impairment of the right lower extremity.

On August 27, 2004 appellant requested an oral hearing. At the hearing held on July 26, 2005, appellant testified that he can do a quick walk. He noted that he can jog temporarily, but

then has to go back to walking. Appellant notes that he has limited jumping ability. He indicated that his right knee hurts when he stays in one position too long. The hearing representative indicated that he would leave the record open for submission of an additional report by Dr. Eakin.

In a letter dated July 29, 2005, appellant indicated that Dr. Eakin told him that he was not qualified to provide an impairment report based on the A.M.A. *Guides*. Appellant requested that the Office have a qualified doctor review his case and provide the report and ratings.

By decision dated September 13, 2005, the hearing representative affirmed the Office's determination that appellant had sustained a 16 percent impairment of his right lower extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</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>3</sup>

### **ANALYSIS**

In a report of June 28, 2004, Dr. Eakin indicated that appellant was doing well with no pain and good strength. He noted residual deficits of 70 percent normal range of motion and 75 percent normal strength. Dr. Eakin concluded that appellant was 100 percent normal for pain and swelling. Utilizing Dr. Eakin's report, the Office medical adviser applied the A.M.A., *Guides* and concluded that appellant had a 16 percent impairment of his right lower extremity. He noted that appellant had Grade 3 pain/decreased sensation that interfered with some activity (rated at 60 percent)<sup>4</sup> of the femoral nerve quadriceps muscle (rated at 7 percent).<sup>5</sup> Multiplying these figures together (7 percent of 60 percent), the Office medical adviser determined that appellant had a 4 percent impairment of the right lower extremity of pain that interferes with some activity. He further determined that appellant had a 12 percent impairment for residual

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.404 (2004).

<sup>3</sup> *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

<sup>4</sup> A.M.A., *Guides* 482, Table 16-10.

<sup>5</sup> *Id.* at 552, Table 17-37.

quadriceps weakness.<sup>6</sup> Then, utilizing the Combined Values Chart, he determined that appellant had a 16 percent impairment of the right lower extremity.<sup>7</sup>

The Office medical adviser properly applied the A.M.A., *Guides* to the conclusions reached by Dr. Eakin and determined that appellant had a 16 percent impairment of his right lower extremity. Since Dr. Eakin did not provide an impairment rating based upon the A.M.A., *Guides*, the Office correctly followed the advice of its medical adviser as he properly applied the A.M.A., *Guides* to Dr. Eakin's findings on medical examination.<sup>8</sup> As there is no other medical evidence establishing that appellant sustained a greater impairment under the schedule, the Office properly found that appellant was entitled to a 16 percent impairment of his right lower extremity. Consequently, appellant has not established that he is entitled to a schedule award for greater impairment than that which he received. Although appellant testified to limitations on jogging and jumping, the schedule award provisions of the Act set forth the number of weeks of compensation payable to employees sustaining permanent loss of use of a scheduled member of the body. The amount payable under a schedule award does not take into account the effect that the impairment has on employment opportunities, sports, hobbies or other lifestyle activities.<sup>9</sup>

### CONCLUSION

Appellant has not established that he has more than a 16 percent impairment to his right lower extremity, for which he received a schedule award.

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<sup>6</sup> *Id.* at 532, Table 17-8.

<sup>7</sup> *Id.* at 604.

<sup>8</sup> See e.g., *Laura Heyen*, 57 ECAB \_\_\_\_ (Docket No. 05-1766, issued February 15, 2006); *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

<sup>9</sup> See *Ruben Franco*, 54 ECAB 496 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 13, 2005 is affirmed.

Issued: April 21, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board