



On April 18, 2002 Dr. Michael J. Kaplan, a Board-certified orthopedic surgeon, performed a partial medial meniscectomy on the left knee. Appellant returned to full-time limited-duty work on May 13, 2002 and to his regular employment on June 3, 2002.

On December 3, 2002 appellant filed a claim for a schedule award. He submitted a December 3, 2002 report from Dr. Kaplan who noted that appellant continued to experience pain in his left knee. On examination, Dr. Kaplan found no effusion, range of motion from 0 to 120 degrees and tenderness “to palpation with some obvious patellofemoral crepitus.” He diagnosed status post left knee arthroscopic debridement and opined that appellant had a 10 percent impairment of his left knee.

By letter dated January 2, 2003, the Office requested that Dr. Kaplan provide an opinion on the extent of appellant’s impairment of the left lower extremity utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*). In a response dated January 9, 2003, Dr. Kaplan asserted that appellant had reached maximum medical improvement. He stated:

“[Appellant] had a 10 [percent] disability of his left knee predicated on his work insult. Determination has been made using the A.M.A. [*Guides*] as a guide and is predicated on the intra-articular findings of a medial meniscus tear as well as some synovitis and injection of the soft tissues. [He] maintains near full motion and has some pain on hyperflexion, which is consistent, also, with the guideline.”

On February 28, 2003 an Office medical adviser reviewed Dr. Kaplan’s report and found that, according to Table 17-33 on page 546 of the A.M.A., *Guides*, appellant had a two percent impairment of his left leg due to his partial meniscectomy. The Office medical adviser determined that appellant had no impairment due to his patellofemoral crepitation. He found that he reached maximum medical improvement on December 3, 2002.

By decision dated May 9, 2003, the Office granted appellant a schedule award for a two percent impairment of the left lower extremity. The period of the award ran for 5.76 weeks from December 3, 2002 to January 12, 2003. The Office utilized the pay rate for claimants with no dependents.

On May 31, 2003 appellant requested an oral hearing. At the hearing, held on December 14, 2004, his attorney noted that appellant had undergone a second operation on his left knee due to a subsequent employment injury.<sup>1</sup> Counsel also indicated that he had a claim for a right knee condition. Appellant submitted a report dated January 8, 2004 from Dr. Kaplan, who found that he had a 20 percent impairment of the right knee. Dr. Kaplan noted that he performed a meniscectomy and debridement of appellant’s left knee on April 19, 2002 as well as a subsequent left knee surgery on August 19, 2003 for a new meniscal injury.

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<sup>1</sup> The Office accepted that appellant sustained internal derangement of the left knee due to a June 12, 2003 employment injury. The Office assigned the claim file number 012017385. On August 19, 2003 Dr. Kaplan performed a second partial medial meniscectomy on the left knee to repair a tear.

In a decision dated March 29, 2005, the Office hearing representative affirmed the May 9, 2003 decision. On January 3, 2006 appellant requested reconsideration. He contended that the Office erred in failing to pay him augmented compensation as he had dependents. Appellant also argued that Dr. Kaplan based his opinion on the A.M.A., *Guides*. He submitted a November 16, 2005 report from Dr. Kaplan, who again opined that appellant had a 10 percent impairment of the left knee due to his employment injury.

By decision dated March 9, 2006, the Office modified its March 29, 2005 schedule award decision to reflect that appellant was entitled to augmented compensation because of his dependents.<sup>2</sup> The Office found, however, that the medical evidence was insufficient to establish that he was entitled to a greater schedule award.<sup>3</sup> In an accompanying decision dated March 9, 2006, the Office granted appellant a schedule award for a two percent impairment of the left lower extremity at the augmented rate of compensation.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing federal regulation,<sup>5</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 for all claimants, the Office has adopted the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) as the uniform standard applicable to all claimants.<sup>6</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>7</sup>

For lower extremity impairments due to meniscectomies or ligament injuries involving the knees, Table 17-1 on page 525 of the A.M.A., *Guides* directs the clinician to utilize section 17.2j, beginning at page 545, as the appropriate method of impairment assessment.<sup>8</sup> Section 71.2j, entitled "Diagnosis-Based Estimates," instructs the clinician to assess the impairment using the criteria in Table 17-33 on page 546, entitled "Impairment Estimates for Certain Lower Extremity Impairments."<sup>9</sup> According to Table 17-33, a partial medial meniscectomy is

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<sup>2</sup> Section 8110 of the Act provides that a claimant is entitled to augmented compensation to three-fourths of the employee's rate of monthly pay if he or she has a dependent. 5 U.S.C. § 8110.

<sup>3</sup> The Office noted that an Office medical adviser reviewed a May 11, 2004 report from Dr. Kaplan in file number 012017385 and determined that it was insufficient to establish entitlement to an increased schedule award.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> 20 C.F.R. § 10.404(a).

<sup>7</sup> See FECA Bulletin No. 01-5, issued January 29, 2001.

<sup>8</sup> A.M.A., *Guides* 525, Table 17-1.

<sup>9</sup> *Id.* at 545.

equivalent to a two percent impairment of the lower extremity.<sup>10</sup> Additional percentages of impairment are awarded for laxity of the cruciate or collateral ligaments.<sup>11</sup>

### ANALYSIS

The Office accepted that appellant sustained a left knee sprain due to a fall at work on February 20, 2002. On April 18, 2002 Dr. Kaplan performed a partial medial meniscectomy on the left knee. Appellant filed a claim for a schedule award on December 3, 2002. He submitted a report from Dr. Kaplan dated December 3, 2002. Dr. Kaplan listed findings of range of motion from 0 to 120 degrees, patellofemoral crepitus, no effusion and tenderness to palpation. He noted appellant's continued complaints of pain and asserted that he had a 10 percent permanent left knee impairment. In a report dated January 9, 2003, Dr. Kaplan explained that he based his 10 percent left knee impairment determination on appellant's meniscus tear, synovitis and pain on hyperflexion.<sup>12</sup> He noted that he had almost full range of motion. In a report dated November 16, 2005, Dr. Kaplan reiterated that appellant had a 10 percent impairment of the left leg. In his reports, however, he did not explain, with reference to the tables and pages of the A.M.A., *Guides* how he calculated his finding that appellant had a 10 percent impairment of the left knee. As Dr. Kaplan's reports do not conform to the A.M.A., *Guides*, they are of diminished probative value.<sup>13</sup>

On February 28, 2003 an Office medical adviser reviewed Dr. Kaplan's January 9, 2003 report. He determined that appellant had a two percent impairment of the left lower extremity based on his partial medial meniscectomy according to Table 17-33 on pages 546 of the A.M.A., *Guides*. The Office medical adviser further found that appellant had no ratable impairment due to his patellofemoral crepitation.<sup>14</sup> As his report conforms to the A.M.A., *Guides*, it constitutes the weight of the medical evidence and establishes that appellant has no more than a two percent impairment of the left lower extremity.

On appeal appellant argues that the Office medical adviser referred to his June 12, 2003 left knee injury rather than his February 20, 2002 left knee injury. He noted that he had also filed a schedule award claim for his June 12, 2003 employment injury. In its March 9, 2006 decision, the Office referenced a report by Dr. Kaplan and the Office medical adviser relevant to appellant's June 12, 2003 employment injury; however, any error by the Office in mentioning these reports does not rise to the level of reversible error as it did not affect the outcome of the

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<sup>10</sup> *Id.* at 546, Table 17-33.

<sup>11</sup> *Id.*

<sup>12</sup> In a report dated January 8, 2004, Dr. Kaplan found that appellant had a 20 percent right knee impairment. He noted appellant's history of left knee surgeries but did not specifically address the extent of impairment of the left leg.

<sup>13</sup> *Mary L. Henninger*, 52 ECAB 408 (2001).

<sup>14</sup> The fifth edition of the A.M.A., *Guides* does not provide an impairment rating for crepitation. Under the A.M.A., *Guides*, an impairment due to arthritis is determined by measuring cartilage intervals as seen by x-ray. A.M.A., *Guides* 544, Table 17-31.

case. Appellant has not submitted evidence sufficient to establish that he has more than a two percent left knee impairment.

**CONCLUSION**

The Board finds that appellant has no more than a two percent impairment of the left lower extremity for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 9, 2006 are affirmed.

Issued: December 26, 2006  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board