

FACTUAL HISTORY

On March 24, 2000 appellant, then a 49-year-old store director, filed a traumatic injury claim alleging that on March 21, 2000 he slipped on a grease spill in the warehouse of the commissary and twisted his left knee. The Office accepted appellant's condition for left knee contusion and authorized arthroscopic surgery, which was performed on June 19, 2000. Appellant did not stop work. Appropriate compensation benefits were paid.

Appellant came under the treatment of Dr. Henry Marion, a Board-certified internist, who noted in an attending physician's report dated March 29, 2000 that appellant sustained a fall and injured his left knee. He diagnosed left knee contusion and noted with a checkmark "yes" that appellant's condition was caused by an employment activity. He treated appellant in follow-up on April 3, 2000 and noted symptoms of painful discomfort of the left knee and diagnosed left knee contusion with probable medial collateral ligament injury.

Appellant came under the treatment of Dr. Thomas P. Gross, a Board-certified orthopedic surgeon, who noted on April 7 and May 12, 2000 that appellant was treated for a left knee injury, which occurred on March 21, 2000 when he slipped on grease and twisted his left leg. X-rays of the left knee revealed no abnormalities. Dr. Gross diagnosed left knee sprain. He noted that a magnetic resonance imaging scan of the left knee revealed a medial meniscus tear. On June 19, 2000 Dr. Gross performed a left knee arthroscopy for repair of the medial meniscal tear. He noted in reports dated June 30 and July 21, 2000, that appellant was progressing post surgery and could return to work on July 10, 2000. Appellant was released to regular duty on April 30, 2001.

On March 31, 2002 appellant filed a claim for a schedule award.

In letters dated April 22 and December 2, 2002, the Office requested that Dr. Gross provide an evaluation as to the extent of permanent partial impairment of the left lower extremity in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*¹ (A.M.A., *Guides*). Appellant's treating physician did not submit an impairment rating.²

On August 11, 2003 the Office referred appellant for a second opinion to Dr. Steven Lancaster, a Board-certified orthopedic surgeon, for an evaluation of the degree of permanent impairment of the left lower extremity in accordance with the A.M.A., *Guides*.

In a report dated September 8, 2003, Dr. Lancaster noted a history of injury and subsequent arthroscopic surgery. He noted findings upon physical examination of range of motion from 0 to 130 degrees with very slight crepitus, no effusion, negative drawer sign, negative pivot shift, negative McMurray test, quadriceps strength was 5/5 and dorsiflexor

¹ A.M.A., *Guides* (5th ed. 2001).

² On June 12, 2003 the Office referred appellant to a second opinion physician for an evaluation of the degree of permanent impairment of his left knee. The referral physician advised that appellant failed to report for the examination. On June 25, 2003 the Office informed appellant that he was required to provide reasons for his failure to attend the medical examination. Appellant advised that he was reassigned to Georgia and requested that he be seen by Dr. Gross for an impairment rating.

strength was 5/5. He diagnosed status post left knee partial medial meniscectomy. Dr. Lancaster advised that appellant reached maximum medical improvement in mid 2001 and could return to work without any specific restrictions. He opined that in accordance with Table 17-33, page 546 of the A.M.A., *Guides*³ appellant sustained a 2 percent permanent impairment of the left lower extremity for a partial medial meniscectomy.

By letter dated December 28, 2004, the Office expanded appellant's claim to include right medial meniscus tear.

On December 29, 2004 the Office referred Dr. Lancaster's report and the case record to an Office medical adviser for evaluation as to the extent of impairment of the left lower extremity in accordance with the A.M.A., *Guides*. In a December 30, 2004 report, the Office medical adviser determined that appellant had reached maximum medical improvement on April 30, 2001. He advised that appellant had arthroscopic partial medial meniscectomy with no complications and an uneventful recovery. He concurred with Dr. Lancaster's impairment rating and opined that, in accordance with Table 17-33, page 546 of the A.M.A., *Guides*, appellant sustained a 2 percent impairment of the left lower extremity.

In a decision dated January 10, 2005, the Office granted appellant a schedule award for two percent permanent impairment of the left leg. The period of the award was April 30 to June 9, 2001.

On January 23, 2005 appellant requested a review of the written record.

By decision dated August 17, 2005, the hearing representative affirmed the decision of the Office dated January 10, 2005, finding that appellant had no more than two percent impairment of his left leg.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ 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.

³ Table 17-33, page 546 of the A.M.A., *Guides*.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

ANALYSIS

On appeal, appellant contends that he has greater than two percent permanent impairment of the left leg. The Office accepted appellant's claim for left knee contusion and later expanded his claim to include right medial meniscus tear.

The Office referred appellant for a second opinion to Dr. Lancaster, who issued a report dated September 8, 2003. Dr. Lancaster diagnosed status post left knee partial medial meniscectomy. He noted that the physical examination revealed no abnormalities and advised that appellant reached maximum medical improvement in mid 2001 and could return to work without any specific left knee restrictions. He opined that under with Table 17-33, page 546 of the A.M.A., *Guides*,⁶ appellant had a 2 percent permanent impairment of the left lower extremity for the partial medial meniscectomy.

The medical adviser properly concurred with the findings of Dr. Lancaster. The medical adviser indicated that appellant had arthroscopic partial medial meniscectomy with no complications and an uneventful recovery. He argued with Dr. Lancaster's impairment rating and opined that in accordance with Table 17-33, page 546 of the A.M.A., *Guides*⁷ that appellant sustained a 2 percent impairment of the left lower extremity.

The Board finds that the medical adviser properly applied the A.M.A., *Guides* to the findings of Dr. Lancaster in calculating an impairment rating of two percent for the left leg. There is no other evidence of record, conforming with the A.M.A., *Guides*, indicating that appellant has any greater impairment.⁸

CONCLUSION

The Board finds that the Office properly determined that appellant had no more than a two percent permanent impairment of the left leg extremity, for which he received a schedule award.

⁶ Table 17-33, page 546 of the A.M.A., *Guides*.

⁷ *Id.*

⁸ The Board notes that the record also contains a January 10, 2005, schedule award decision for permanent impairment to the left and right arms. However, this decision is not before the Board on the present appeal as appellant does not seek review of this decision and because it appears to pertain to a matter developed separately from the present claim.

ORDER

IT IS HEREBY ORDERED THAT the August 17 and January 10, 2005 decisions of the Office are affirmed.

Issued: January 24, 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