

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

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BRYAN A. KRIGER, Appellant )  
and ) Docket No. 05-1950  
DEPARTMENT OF THE NAVY, NAVAL BASE, ) Issued: March 1, 2006  
Lakehurst, NJ, Employer )  
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)

*Appearances:*

*Thomas R. Uliase, Esq.*, for the appellant  
*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 September 21, 2005 appellant filed a timely appeal of a May 11, 2005 decision of a hearing representative of the Office of Workers' Compensation Programs that found he had no more than a 17 percent permanent impairment of his right leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has more than a 17 percent permanent impairment of his right leg.

**FACTUAL HISTORY**

On August 1, 2000 appellant, then a 28-year-old firefighter, filed a traumatic injury claim for an injury to his right knee sustained in a July 25, 2000 softball game. The Office accepted that he sustained a torn ligament of the right knee in the performance of duty, and authorized surgery to correct this condition. On September 6, 2000 Dr. Gerald D. Hayken, a Board-certified orthopedic surgeon, performed an arthroscopic anterior cruciate ligament (ACL) reconstruction

on appellant's right knee. In a February 23, 2001 report, Dr. Hayken stated that appellant was doing quite well with a full range of knee motion, good strength, reversal of quadriceps atrophy and no need for further treatment. He stated that appellant could return to full duty and recommended that he wear a knee brace when fighting fires.

On August 4, 2001 appellant filed a claim for a schedule award. He submitted a June 20, 2001 report from Dr. David Weiss, an osteopath, describing the permanent impairment of his right leg. Dr. Weiss reported that examination on June 8, 2001 revealed a full 140 degrees of motion, firm endpoints on valgus and varus stress tests, some laxity on the anterior drawer sign, 5/5 strength of the gastrocnemius and quadriceps musculature, equal circumferences of the right and left gastrocnemius muscles, and quadriceps circumferences at 10 centimeters (cm) above the patella of 41 cm on the right and 44 cm on the left. Using the tables of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Weiss assigned a 17 percent impairment for moderate ACL laxity and 13 percent for thigh atrophy, which he combined for a 28 percent permanent impairment of the right leg.

On June 18, 2002 Dr. Morley Slutsky, an Office medical adviser who is Board-certified in preventive medicine and in occupational medicine, reviewed the medical evidence and agreed with Dr. Weiss' assignment of 17 percent impairment for moderate ACL laxity, using Table 17-33 of the A.M.A., *Guides*. He noted that Table 17-6 provided for a 13 percent impairment for 3 cm of atrophy, but that the cross usage table of the A.M.A., *Guides* provided that ratings for laxity could not be combined with ratings for atrophy. Dr. Slutsky stated: "In these situations the rating that is most specific to the claimant's injury (and is the largest) is used. I will use the claimant's ACL laxity as the rating because the claimant's injury was an ACL tear that needed repair. Total right lower extremity impairment is 17 percent."

On June 25, 2002 the Office issued a schedule award for a 17 percent permanent impairment of appellant's right leg. On July 1, 2002 appellant requested a hearing, which was held on February 14, 2005. By decision dated May 11, 2005, an Office hearing representative affirmed the schedule award, based on a finding that there was no evidence the Office medical adviser erred in his impairment rating.

#### **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.

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

## **ANALYSIS**

Based on his examination of appellant on June 8, 2001, Dr. Weiss concluded that appellant had a 28 percent permanent impairment of the right leg, derived by combining a 17 percent impairment for moderate ACL laxity with a 13 percent impairment for thigh atrophy. Dr. Slutsky, an Office medical adviser, agreed that these percentages were appropriate, given the findings on Dr. Weiss' examination of appellant.

The only point of disagreement between Drs. Weiss and Slutsky is whether the impairment for ligament laxity can be combined with that for thigh atrophy. The A.M.A., *Guides* plainly states that they cannot. Table 17-2, the cross-usage chart, shows that an impairment rating for muscle atrophy cannot be combined with an impairment rating using a diagnosis-based estimate. Table 17-33, from which the impairment for ligament laxity was obtained, is the table of diagnosis-based estimates. As Dr. Slutsky's rating was the only one that complies with the tables of the A.M.A., *Guides*, it constitutes the weight of the medical evidence.<sup>3</sup>

## **CONCLUSION**

The Board finds that appellant has no more than a 17 percent permanent impairment of the right leg.

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<sup>3</sup> *Michael C. Norman*, 42 ECAB 768 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 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