

orthopedic surgeon, performed surgery on November 18, 2003, consisting of a partial lateral meniscectomy and repair of a torn medial meniscus.

On March 26, 2004 appellant filed a claim for a schedule award. He submitted a March 18, 2004 report from Dr. Bobo, who reported that examination of his knee on that day, motion of 5 to 115 degrees, clinical stability and a lateral joint space of 2 millimeters (mm) on x-rays. Dr. Bobo stated that appellant had reached maximum medical improvement and had a permanent impairment of 20 percent of the left lower extremity. An Office medical adviser reviewed this report on June 2, 2004 and stated that, according to Table 17-31 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), a 2 mm cartilage interval constituted a 20 percent impairment of the leg.

On July 21, 2004 the Office issued a schedule award for a 20 percent permanent impairment of the left leg.

On February 15, 2005 Dr. Bobo again performed arthroscopic surgery on appellant's left knee, consisting of debridement and removal of small loose bodies. In a May 26, 2005 report, Dr. Bobo stated that examination that day revealed knee motion from minus 5 to 125 degrees, a 1+ anterior drawer sign and trace Lachman's test, and, on x-rays, 8 mm of medial joint space and 3 mm of lateral joint space. Dr. Bobo stated that appellant had reached maximum medical improvement and that he had a 14 percent impairment of the left leg. An Office medical adviser reviewed this report on July 28, 2005 and stated that appellant's meniscal injury constituted a two percent impairment of the leg, using Table 17-33 of the A.M.A., *Guides*.

By decision dated August 3, 2005, the Office found that appellant was not entitled to an additional schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In schedule award cases, a distinction is made between an application for an additional schedule award and a request for reconsideration of the existing schedule award. When a claimant is asserting that the original award was erroneous based on his or her medical condition at that time, this is a request for reconsideration. A claim for an additional schedule award may

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

be based on new exposure to employment factors or on the progression of an employment-related condition, without new exposure, resulting in a greater permanent impairment.³

ANALYSIS

On July 21, 2004 the Office issued a schedule award for a 20 percent permanent impairment of the left leg. This award was based on a cartilage interval of two mm, as provided by Table 17-31 of the A.M.A., *Guides*. Appellant did not request reconsideration of this schedule award, but rather submitted another claim for a schedule award, with a medical report of a more recent examination. This constituted a request for an additional schedule award.

It is unlikely that an employee who received a schedule award for a 20 percent impairment, as did appellant, could show entitlement to an additional schedule award by submitting a medical report stating that he has a 14 percent impairment of the same member. However, as physicians' skills in applying the tables of the A.M.A., *Guides* to their findings on examination vary widely, it was proper for an Office medical adviser to review the findings on examination of the new medical report to determine if they justified a greater schedule award than that previously granted.

An Office medical adviser reviewed the May 26, 2005 report from Dr. Bobo that appellant submitted with his application for an additional schedule award and assigned a two percent impairment for a partial meniscectomy, which is the correct percentage under Table 17-33. The Office medical adviser did not explain why he did not also assign a percentage for cartilage interval under Table 17-31, as the cross-usage chart, Table 17-2 of the A.M.A., *Guides*, indicates that ratings from these two methods can be combined. However, the Board notes that Dr. Bobo's May 26, 2005 report shows a cartilage interval of three mm, which is better than the cartilage interval of two mm on which the July 21, 2004 schedule award was based. Table 17-31 provides that a knee cartilage interval of three mm constitutes a seven percent impairment of the leg. Even combined with the two percent for the partial meniscectomy, this would result in only a nine percent impairment of the left leg. Dr. Bobo's May 26, 2005 report does not show that appellant has a permanent impairment of his left leg greater than the 20 percent for which he received a schedule award.

CONCLUSION

The Board finds that appellant has established that he has a permanent impairment of his left leg greater than the 20 percent for which he received a schedule award.

³ *Rose V. Ford*, 55 ECAB ___ (Docket No. 04-15, issued April 6, 2004); *Linda T. Brown*, 51 ECAB 115 (1999). This distinction is also made at Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7b (August 2002).

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 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