

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

MICHAEL R. COGAN, Appellant

and

**DEPARTMENT OF JUSTICE, DRUG
ENFORCEMENT AGENCY, New York, NY,
Employer**

**Docket No. 06-269
Issued: March 6, 2006**

Appearances:
John Rodia, 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 November 14, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 26, 2005 with respect to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue in this case.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment to his right leg, for which he received a schedule award.

FACTUAL HISTORY

On November 14, 2003 appellant, then a 31-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury while chasing a suspect in the performance of duty on November 10, 2003. On December 12, 2003 appellant underwent right knee surgery by Dr. Richard Diana, an orthopedic surgeon, who diagnosed tears of the

anterior cruciate ligament, as well as the medial and lateral meniscus. The Office accepted the claim for right knee sprain and a right torn anterior cruciate ligament.

In a report dated October 14, 2004, Dr. Diana noted that appellant had a prior left knee injury in August 2002.¹ He noted that appellant had right knee surgery in December 2003 and had returned to full duty. Dr. Diana provided results on examination, reporting that appellant lacked 1 to 2 degrees of extension on the right and a decrease of 10 to 15 degrees on both knees compared to his preoperative condition. He found no medical or lateral instability, or pain over either joint line. According to Dr. Diana, appellant had excellent strength although he still had some atrophy. He concluded that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.), appellant had 20 percent permanent impairment to both knees. Dr. Diana did not refer to any specific tables.

The Office referred the case to an Office medical adviser for evaluation. In a report dated September 11, 2005, the medical adviser indicated that there was no impairment based on loss of range of motion for the right knee under Table 17-10. He noted Dr. Diana's findings of no instability, pain and normal strength. The Office medical adviser found that, under Table 17-33, a partial medial and lateral meniscectomy is a 10 percent leg impairment, and there was no indication of a cruciate laxity. He concluded that appellant had a 10 percent leg impairment, with October 14, 2004 as the date of maximum medical improvement.

By decision dated October 26, 2005, the Office issued a schedule award for a 10 percent permanent impairment to the right leg.² The period of the award was 28.8 weeks commencing October 14, 2004.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴

¹ The record indicates that appellant has a separate claim for a left knee injury that is not before the Board on this appeal.

² The decision does not appear to have been sent to the representative of record, as required by 20 C.F.R. § 10.127. Appellant promptly filed his appeal to the Board on November 14, 2005.

³ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁴ A. George Lampo, 45 ECAB 441 (1994).

ANALYSIS

Appellant notes on appeal that his physician, Dr. Diana, opined that he had a 20 percent right leg impairment and yet the schedule award was issued for a 10 percent impairment. Dr. Diana did not, however, provide a reasoned medical opinion on the issue of permanent impairment. He did not identify any specific tables or explain how he determined the degree of impairment to the right leg.

The Office medical adviser did explain how he applied the provisions of the A.M.A., *Guides* in calculating the impairment rating. The medical adviser noted that Dr. Diana's report did not establish impairment based on loss of range of motion. The proper table for impairments based on loss of knee range of motion is Table 17-10, which requires, for example, flexion of less than 110 degrees to establish an impairment based on loss of knee flexion.⁵ Dr. Diana did not provide actual measurements of knee flexion or flexion contracture that would establish an impairment under Table 17-10. The medical adviser also noted the examination results regarding pain and strength, and found no ratable impairment in this regard.

The A.M.A., *Guides* provide diagnosis-based estimates of knee impairments pursuant to Table 17-33.⁶ For a partial medial and lateral meniscectomy, Table 17-33 provides a 10 percent leg impairment. There are impairments for cruciate ligament laxity, depending on the severity, but the medical adviser noted that Dr. Diana did not describe a cruciate laxity.⁷

Accordingly, the Board finds that the weight of the medical evidence with regard to the degree of permanent impairment to the right leg is represented by the Office medical adviser. He provided a reasoned opinion that appellant had a 10 percent permanent impairment based on Table 17-33.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant's loss was 10 percent, he is entitled to 10 percent of 288 weeks, or 28.80 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.⁸ In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Diana. The award therefore properly runs for 28.80 weeks commencing on October 14, 2004.

⁵ A.M.A., *Guides* 537, Table 17-10.

⁶ *Id.* at 546, Table 17-33.

⁷ *Id.*

⁸ *Albert Valverde*, 36 ECAB 233, 237 (1984).

CONCLUSION

The Board finds that the evidence does not establish that appellant has more than a 10 percent permanent impairment to his right leg, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 26, 2005 is affirmed.

Issued: March 6, 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