



On February 12, 2004 appellant filed a claim for a schedule award. He submitted a March 3, 2003 report from Dr. David Weiss, an osteopath and a Board-certified family practitioner. Dr. Weiss found that appellant had a 25 percent impairment of the right lower extremity due to cruciate and collateral ligament laxity. He also found that appellant had a 10 percent impairment due to medial and lateral partial meniscectomies. To this 33 percent combined impairment, he added 3 percent for pain-related impairment, for a total impairment rating of 36 percent.

On April 1, 2004 an Office medical adviser reviewed Dr. Weiss' report and determined that appellant had a 23 percent impairment of his right lower extremity: 14 percent for laxity of the anterior cruciate and medial collateral ligaments, combined with 10 percent for partial medial and lateral meniscectomies pursuant to the Combined Value Chart in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The medical adviser explained that Dr. Weiss mistakenly used the impairment value for moderate laxity -- appellant's laxity was mild -- and that there was no need to add 3 percent for pain-related impairment if appellant's pain was only 2 to 4 on a scale of 10.

On April 13, 2004 the Office issued a schedule award for a 23 percent impairment of the right lower extremity. An Office hearing representative's decision dated May 13, 2005 affirmed that the opinion of the Office medical adviser represented the weight of the evidence. On the prior appeal,<sup>1</sup> the Board set aside the hearing representative's decision and remanded the case to the Office for completion and proper assemblage of the record. After ensuring that the reports of Dr. Weiss and the Office medical adviser were a part of the case record, the Office preserved appellant's appeal rights by issuing a decision on March 29, 2006 adopting the findings of the hearing representative. The present appeal followed.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>2</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>3</sup>

### **ANALYSIS**

In his March 3, 2003 report, Dr. Weiss, appellant's osteopath, reported mild laxity on anterior drawer sign and Lachman test, indicating mild laxity of the anterior cruciate and medial collateral ligaments. According to Table 17-33, page 546, of the A.M.A., *Guides*, mild laxity in either a cruciate or a collateral ligament is a seven percent impairment of the lower extremity.

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<sup>1</sup> Docket No. 05-1957 (issued February 2, 2006).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

There is no explicit provision for mild laxity in both. Moderate laxity in both is a 25 percent impairment, which Dr. Weiss awarded. However, moderate laxity is not what Dr. Weiss found on physical examination. The Board finds that the more appropriate rating is 7 percent for mild laxity in each ligament, which combines for 14 percent.<sup>4</sup>

Table 17-33 also provides that partial meniscectomy of both the medial and lateral meniscus represents a 10 percent impairment of the lower extremity. The 10 percent impairment for partial meniscectomies combines with the 14 percent for mild ligament laxity for a total 23 percent diagnosis-based estimate of impairment, which the Office awarded.

Dr. Weiss added a three percent pain-related estimate, but Chapter 18 of the A.M.A., *Guides* cautions that examiners should not use that chapter to rate pain-related impairment from any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters.<sup>5</sup> Because the impairment ratings in the body organ systems chapters make allowance for any accompanying pain,<sup>6</sup> Dr. Weiss would have to explain why the diagnosis-based estimates in Table 17-33, page 546, do not adequately make allowance for appellant's pain, which he rated as 2 to 4 on a scale of 10. Without a convincing explanation, Dr. Weiss' report does not support an additional three percent for pain-related impairment.

### CONCLUSION

The Board finds that appellant has no more than a 23 percent impairment of his right lower extremity.

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<sup>4</sup> A.M.A., *Guides* 604 (Combined Values Chart). The Board notes that combining moderate laxity in one with moderate laxity in the other (31 percent) is greater than the given rating for moderate laxity in both (25 percent). Likewise, combining severe laxity in one with severe laxity in the other (44 percent) is greater than the given rating for severe laxity in both (37 percent). It is believed, therefore, that combining mild laxity in the anterior cruciate ligament with mild laxity in the medial collateral ligament fully compensates appellant for the presence of both laxities.

<sup>5</sup> *Id.* at 571.

<sup>6</sup> *Id.* at 20.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 29, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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