

2004 medical report of Dr. Jose A. Alicea, an attending Board-certified orthopedic surgeon, to terminate appellant's compensation on the grounds that he had no residuals or disability causally related to his employment-related medial meniscus tear of the left knee after that date. The facts and the circumstances of the case, as set forth in the Board's prior decision, are incorporated herein by reference.²

On June 30, 2005 appellant filed a claim for a schedule award. In a July 2, 2005 report, Dr. Alicea stated that appellant reached maximum medical improvement on June 29, 2005. He noted that appellant had one percent impairment of the whole person for his partial medial meniscectomy based on Table 17-33 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). Utilizing Table 17-31 on page 544 of the A.M.A., *Guides*, Dr. Alicea determined that appellant sustained three percent impairment of the whole person due to degenerative changes he had at the time of his arthroscopic surgery. He combined the impairment ratings for the partial medial meniscectomy and degenerative changes at the time of surgery to determine that appellant had four percent impairment of the whole person which constituted nine percent impairment of the left lower extremity.

On April 7, 2006 an Office medical adviser reviewed Dr. Alicea's July 2, 2005 report. He found that appellant reached maximum medical improvement on July 2, 2005. Utilizing the A.M.A., *Guides* 546, Table 17-33, the medical adviser found that appellant had two percent impairment of the left lower extremity due to his partial medial meniscectomy. He noted Dr. Alicea's recommendation for further impairment due to degenerative changes seen at arthroscopy based on the A.M.A., *Guides* 544, Table 17-31. The medical adviser stated that the A.M.A., *Guides* provides impairment for degenerative changes that were quantified based on cartilage intervals as demonstrated on x-ray evaluation, not on intra-articular observations. For this reason, he was unable to use degenerative arthritis as a determinate of impairment in this case.

By decision dated May 18, 2006, the Office found that appellant was not entitled to a schedule award due to the termination of his compensation benefits.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the

² On August 25, 2003 appellant, then a 48-year-old consular officer, filed a traumatic injury claim alleging that on August 21, 2003 he hurt his left knee when he stepped off a platform at work. On March 12, 2004 the Office accepted that appellant sustained a medial meniscus tear of the left knee and authorized a partial medial meniscectomy and chondroplasty of the medial femoral condyle which were performed on March 29, 2004. Appellant resigned from his consular officer position effective March 30, 2004.

³ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.404.

percentage of loss of use.⁵ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁶

When a claimant's compensation is not terminated based on his refusal of suitable work under 5 U.S.C. § 8106(c), he is not barred from receiving schedule award compensation for any period after the termination decision has been reached.⁷

ANALYSIS

Appellant contends that he is entitled to a schedule award for permanent impairment of his left lower extremity. The Office denied his claim on the grounds that his compensation benefits had been terminated. The Office, however, erred in denying appellant's entitlement to a schedule award by treating the termination of his compensation as one based on a refusal of suitable work under section 8106(c).⁸ In this case, appellant's compensation was terminated because the medical evidence of record established that he no longer had any residuals or disability causally related to his employment-related medial meniscus tear of the left knee by December 26, 2004, based on the medical opinion of Dr. Alicea, an attending orthopedic physician, and not due to his refusal of the employing establishment's offer of suitable work. Accordingly, the Board finds that appellant may in fact be entitled to a schedule award for his left lower extremity if he submits medical evidence establishing employment-related permanent impairment.⁹

CONCLUSION

The Board finds that the Office improperly determined that appellant was not entitled to a schedule award for his left lower extremity. Thus, the Office's denial must be reversed because it should have treated his claim as a termination of compensation based on improved medical condition, which was the basis of the termination, rather than as a termination of compensation under 5 U.S.C. § 8106(c).

⁵ 5 U.S.C. § 8107(c)(19).

⁶ *Id.*

⁷ See 20 C.F.R. § 10.517; *Stephen R. Lubin*, 43 ECAB 564, 573 (1992).

⁸ *Id.*

⁹ The Board notes that, in this case, the Office has not issued a final decision as to whether the medical evidence submitted by appellant supports an employment-related permanent impairment, with a date of maximum medical improvement that is after December 26, 2004.

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2006 decision of the Office of Workers' Compensation Programs is reversed. The case record is returned to the Office.

Issued: April 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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