

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

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**T.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Madison, TN, Employer**

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**Docket No. 07-1018  
Issued: August 9, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 6, 2007 appellant filed a timely appeal from a February 6, 2007 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he has greater than a two percent impairment of the left leg for which he received a schedule award.

**FACTUAL HISTORY**

On July 12, 2006 appellant, then a 51-year-old maintenance worker, sustained a left knee sprain and torn posterior horn of the left medial meniscus when he slipped on a ladder at work. He stopped work that day. On August 15, 2006 Dr. Alan S. Henson, an orthopedic surgeon, performed an authorized partial medial meniscectomy. Appellant returned to limited duty on September 18, 2006. On November 16, 2006 he filed a schedule award claim. In a November 8, 2006 treatment note, Dr. Henson advised that appellant had good muscle tone with full active

and passive range of motion of the left knee and no warmth, erythema, effusion, crepitation or popliteal cyst and no ligamentous instability or rotary to stress testing. He advised that x-ray demonstrated no increase in appellant's Grade 1 arthritis and that he had reached maximum medical improvement. Dr. Henson concluded that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),<sup>1</sup> appellant had a three percent left lower extremity impairment. By report dated December 1, 2006, an Office medical adviser determined that maximum medical improvement was reached on September 18, 2006. In accordance with Table 17-33 of the fifth edition of the A.M.A., *Guides*, he advised that appellant had a two percent impairment for a partial meniscectomy.

The Office determined that a conflict in medical evidence was created between the opinions of Dr. Henson and the Office medical adviser. It referred appellant to Dr. Jan M. Gorzny, Board-certified in orthopedic surgery, for an impartial evaluation and impairment rating. In a January 14, 2007 report, Dr. Gorzny noted his review of the statement of accepted facts and medical record. He advised that a November 8, 2006 x-ray demonstrated a well-preserved joint line with no evidence of osteoarthritis. On examination, the left knee showed good muscle development with no effusion and full range of motion of extension and flexion of the left knee. Ligamentous examination was completely normal. Dr. Gorzny diagnosed left knee status post arthroscopic partial medial meniscectomy with no evidence of arthritis. He concluded that, under Table 17-33 of the A.M.A., *Guides*, with a partial medial meniscectomy, appellant had a two percent impairment of the left lower extremity.

By decision dated February 6, 2007, the Office granted appellant a schedule award for a two percent permanent impairment of the left leg, for a total of 5.76 weeks, to run from September 18 to October 28, 2006.

### **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and section 10.404 of the implementing federal regulation,<sup>3</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>4</sup> Chapter 17 provides the framework for assessing lower extremity impairments.<sup>5</sup>

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> See *Joseph Lawrence, Jr.*, *supra* note 1; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>5</sup> A.M.A., *Guides*, *supra* note 1 at 523-564.

When a diagnosis-based impairment rating is applied, it is generally not appropriate to calculate additional impairment based on anatomic or functional based methods (such as limitations of strength or range of motion).<sup>6</sup> Table 17-33 provides that a partial medial or lateral meniscectomy yields a two percent lower extremity impairment.<sup>7</sup>

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>8</sup> When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>9</sup> Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has no more than a two percent impairment of the left lower extremity. Dr. Henson's August 15, 2006 operative report provided that appellant had a partial left knee meniscectomy. The Office found that a conflict was created regarding appellant's degree of left knee impairment between the opinions of Dr. Henson and the Office medical adviser. It referred him to Dr. Gorzny for an impartial evaluation. In a January 14, 2007 report, Dr. Gorzny noted the x-ray report of no evidence of arthritis and that the left knee showed good muscle development with no effusion, full range of motion of knee extension and flexion, and a normal ligamentous examination. He properly utilized Table 17-33 of the A.M.A., *Guides* to determine that appellant's diagnosis of partial medial meniscectomy represented a two percent impairment of the left lower extremity. The Board finds that Dr. Gorzny's impartial evaluation is in accordance with the A.M.A., *Guides* and is entitled to special weight. Appellant has not established that he has more than the two percent awarded for his left lower extremity.<sup>11</sup>

### CONCLUSION

The Board finds that appellant has established that he is entitled to a schedule award for a two percent left lower extremity impairment.

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<sup>6</sup> *Id.* at 545, section 17.2j; *Derrick C. Miller*, 54 ECAB 266 (2002).

<sup>7</sup> *Id.* at 546.

<sup>8</sup> 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

<sup>9</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>10</sup> *See Thomas J. Fragale*, 55 ECAB 619 (2004).

<sup>11</sup> Appellant would not be entitled to an additional impairment rating based on cartilage interval narrowing as described in Table 17-31 of the A.M.A., *Guides*, *supra* note 1 at 544, because Dr. Gorzny found that, upon examining a November 8, 2006 x-ray, appellant had a well-preserved joint line and no appreciable arthritis.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 6, 2007 be affirmed.

Issued: August 9, 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