

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

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**A.F., Appellant**

**and**

**DEPARTMENT OF THE ARMY, U.S. ARMY  
CORPS OF ENGINEERS, Philadelphia, PA,  
Employer**

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**Docket No. 07-635  
Issued: July 2, 2007**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant  
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 January 4, 2007 appellant timely appealed the December 22, 2006 merit decision of the Office of Workers' Compensation Programs, which granted a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award.

**ISSUE**

The issue is whether appellant has more than 20 percent impairment of the left lower extremity.

**FACTUAL HISTORY**

Appellant, a 59-year-old small craft operator, injured his left lower extremity on November 29, 2005 when he fell into an open hatch aboard a tugboat. He immediately stopped working. The Office accepted appellant's claim for left knee contusion, left lateral collateral

ligament sprain and permanent aggravation of left knee osteoarthritis. He returned to work in a limited-duty capacity on February 21, 2006.

On April 9, 2006 appellant filed a claim for a schedule award. However, he did not submit any evidence of a permanent impairment attributable to his November 29, 2005 employment injury. The Office denied his claim in a decision dated May 31, 2006.

Appellant requested reconsideration on June 15, 2006. The request was accompanied by a May 2, 2006 impairment rating from Dr. George L. Rodriguez, a Board-certified physiatrist. According to Dr. Rodriguez, appellant reached maximum medical improvement on March 3, 2006 and he had 68 percent impairment of his left lower extremity. Dr. Rodriguez referenced a March 22, 2006 x-ray and a prior magnetic resonance imaging scan as evidence of appellant's left knee osteoarthritis. He found 50 percent impairment for arthritis involving the knee joint and 20 percent impairment for severe patellofemoral arthritis. Dr. Rodriguez also noted that appellant had 20 percent lower extremity impairment due to a moderate left knee flexion contracture of 15 percent.<sup>1</sup>

Dr. Steven H. Kahn, an orthopedic surgeon and Office referral physician, examined appellant on July 24, 2006. He found 25 percent impairment due to left knee arthritis and 10 percent impairment for a mild left knee flexion contracture of 7 percent, for an overall lower extremity impairment of 35 percent. Dr. Kahn indicated that appellant reached maximum medical improvement on March 18, 2006.

The Office found a conflict of medical opinion and referred appellant for an impartial medical examination with Dr. Walter Poprycz, a Board-certified orthopedic surgeon, who examined appellant on September 7, 2006 and found an overall left lower extremity impairment of 35 percent. According to Dr. Poprycz, appellant had reached maximum medical improvement on March 20, 2006. In a supplemental report dated November 29, 2006, Dr. Poprycz explained that appellant had a left knee flexion contracture of approximately 10 percent, which represented a moderate 20 percent impairment of the left lower extremity. He also noted that appellant had arthritis of the patellofemoral joint, with a corresponding lower extremity impairment of 15 percent. Dr. Poprycz further explained that he added the range-of-motion impairment (20 percent) and the arthritis-based impairment (15 percent) for a total left lower extremity impairment of 35 percent.

The Office medical adviser reviewed the case file on December 8, 2006 and recommended that appellant receive an award for 20 percent left lower extremity impairment based on Dr. Poprycz' finding of a left knee range-of-motion deficit. He explained that the lesser impairment for patellofemoral arthritis should be disregarded because it could not properly be combined with a range-of-motion impairment.

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<sup>1</sup> Although Dr. Rodriguez identified two arthritis-based impairments (50 percent and 20 percent) and a range-of-motion impairment (20 percent), he did not explain how he reached his overall lower extremity impairment rating of 68 percent.

By decision dated December 22, 2006, the Office granted appellant a schedule award for 20 percent impairment of the left lower extremity. The award covered a period of 57.6 weeks from March 20, 2006 to April 27, 2007. The current appeal followed.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>2</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>3</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>4</sup>

### **ANALYSIS**

Appellant's counsel argued that the schedule award should have been based on Dr. Rodriguez' May 2, 2006 left lower extremity impairment rating of 68 percent. The Board disagrees. Dr. Rodriguez's impairment rating was not consistent with the rating provided by Dr. Kahn, whose opinion the Office had solicited. The two physicians disagreed about the severity of appellant's left knee flexion contracture as well as the location and extent of the arthritis affecting appellant's left knee. Because of this disagreement, the Office declared a conflict in medical opinion and referred appellant to Dr. Poprycz for an impartial medical evaluation.<sup>5</sup>

Dr. Poprycz and Dr. Rodriguez were in agreement with respect to the impairment attributable to appellant's left knee flexion contracture. They both described the condition as moderate, with a corresponding lower extremity impairment rating of 20 percent pursuant to Table 17-10, A.M.A., *Guides* 537,<sup>6</sup> but their opinions differed regarding the extent of impairment attributable to appellant's left knee osteoarthritis. Dr. Rodriguez found impairment

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<sup>2</sup> For a total loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2) (2000).

<sup>3</sup> 20 C.F.R. § 10.404 (2006).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

<sup>5</sup> The Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>6</sup> The knee impairment is considered moderate when the flexion contracture is between 10 degrees and 19 degrees. Table 17-10, A.M.A., *Guides* 537. Whereas Dr. Rodriguez' May 2, 2006 examination revealed a 15 degrees loss, Dr. Poprycz' subsequent examination demonstrated an approximate 10 degrees flexion contracture. However, both measurements fall within the range of a moderate impairment.

involving both the knee and patellofemoral joints.<sup>7</sup> However, Dr. Poprycz' arthritis impairment rating was limited to the patellofemoral joint, for which he found 15 percent lower extremity impairment based on a one millimeter cartilage interval under Table 17-31, A.M.A., *Guides* 537.

When the Office's medical adviser reviewed the case file on December 8, 2006, he concurred with Dr. Poprycz' impairment ratings for loss of range of motion (20 percent) and patellofemoral arthritis (15 percent). However, he correctly noted that these two methods for evaluating lower extremity impairment could not be combined under the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). Table 17-2, A.M.A., *Guides* 526, specifically precludes the combination of these two lower extremity impairment evaluation methods. Furthermore, the A.M.A., *Guides* section on evaluating lower extremity arthritis impairments provides that "[i]mpairment of individuals with knee flexion contractures should not be estimated using x-rays because measurements are unreliable. In these individuals, the range-of-motion method should be used."<sup>8</sup> The Office medical adviser recommended that appellant's schedule award be based on Dr. Poprycz' 20 percent lower extremity rating for flexion contracture, which was the greater of the two ratings provided.

The Board finds that the Office properly relied on Dr. Poprycz's opinion. It was sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Poprycz also reported accurate medical and employment histories. Therefore, the Office properly accorded determinative weight to Dr. Poprycz' findings, as he was the impartial medical examiner.<sup>9</sup> The 20 percent impairment rating provided by the Office medical adviser on December 8, 2006 is consistent with Dr. Poprycz' examination findings and conforms to the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). As such, the reports of Dr. Poprycz constitute the weight of the medical evidence.<sup>10</sup>

### **CONCLUSION**

Appellant has not demonstrated that he has greater than 20 percent impairment of the left lower extremity.

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<sup>7</sup> Citing Table 17-31, A.M.A., *Guides* 544, Dr. Rodriguez found 50 percent impairment of the knee joint and 20 percent impairment of the patellofemoral joint.

<sup>8</sup> Section 17.2h, A.M.A., *Guides* 544.

<sup>9</sup> Where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

<sup>10</sup> See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 22, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 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