

referred appellant for a referee examination by Dr. Walter Dearolf, a Board-certified orthopedic surgeon. Based on Dr. Dearolf's July 25, 2006 report, the Office accepted aggravation of degenerative joint disease of the left knee.

Appellant submitted a September 22, 2006 report from Dr. Richard Zamarin, an orthopedic surgeon, who noted that he had continued to work light duty until he retired from federal employment in February 2006. Dr. Zamarin opined that appellant had a 37 percent left leg permanent impairment, based on Tables 17-35 and 17-33 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Using the point system described in Table 17-35 for knee replacement surgery he found that appellant had 91 points, which is a "good result" under Table 17-33 and results in a 37 percent leg impairment. With respect to the date of maximum medical improvement (MMI), Dr. Zamarin opined that this occurred on July 2, 2001 as this was approximately one year after the surgery and was in accord with a July 2, 2001 left knee x-ray.

The evidence was reviewed by an Office medical adviser who opined in a November 7, 2006 report that he concurred with Dr. Zamarin's opinion as to the degree of left leg permanent impairment. The medical adviser noted that Dr. Zamarin provided a date of MMI of July 2, 2001 which the medical adviser stated was the date of the left knee surgery. He stated that the minimum time for recovery would be one year after the surgery. According to the medical adviser, there was no documentation of MMI until Dr. Zamarin's examination and, therefore, he recommended September 22, 2006 as the date of MMI.

By decision dated November 22, 2006, the Office issued a schedule award for a 37 percent permanent impairment to the left leg. The period of the award was 106.56 weeks commencing July 2, 2001. The pay rate for compensation purposes was \$458.38 per week.

In a letter dated November 22, 2006, appellant requested reconsideration. He argued that the applicable pay rate date should be September 22, 2006, the date of examination by Dr. Zamarin, citing *Patricia K. Cummings*.²

By decision dated December 13, 2006, the Office modified the November 22, 2006 decision with respect to pay rate. The Office indicated that the pay rate of \$458.38 was based on a May 20, 1986 date-of-injury pay rate. According to the Office, the date disability began, July 18, 2000, was the correct pay rate date.

LEGAL PRECEDENT -- ISSUE 1

Under section 8107 of the Federal Employees' Compensation Act³ and section 10.404 of the implementing federal regulations,⁴ 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

² 53 ECAB 623 (2002).

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.404.

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.⁵

ANALYSIS -- ISSUE 1

Based on the weight of the medical evidence, the Board finds the Office properly determined that appellant had a 37 percent left leg impairment in this case. For total loss of use of the leg, the maximum number of weeks of compensation is 288.⁶ Appellant is, therefore, entitled to 37 percent or 106.56 weeks.

Dr. Zamarin properly applied Table 17-35 for knee replacement results by assessing pain, range of motion and stability and adding the appropriate points together.⁷ He concluded that appellant had 99 points and then he deducted 8 points for extension lag and alignment, resulting in 91 points. Under Table 17-33, 91 points is considered a “good” result and there is a 37 percent leg impairment.⁸ The Office medical adviser concurred with Dr. Zamarin’s application of Tables 17-35 and 17-33.

LEGAL PRECEDENT -- ISSUE 2

It is well established that the period covered by a schedule award commences on the date that the employee reaches MMI from residuals of the employment injury.⁹ Maximum improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.¹⁰

ANALYSIS -- ISSUE 2

The attending physician, Dr. Zamarin, provided a reasoned opinion that the date of MMI was July 2, 2001. The left knee surgery was on July 18, 2000 and he indicated that the date of maximum improvement would be approximately one year later. Dr. Zamarin further noted that an x-ray on July 2, 2001 showed an excellent result from the surgery.

⁵ *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ 5 U.S.C. § 8107(c).

⁷ A.M.A., *Guides* 549, Table 17-35. This table is designed to rate the results of knee replacement surgery. Points are assigned for pain, range of motion and stability, with points deducted for flexion contracture, extension lag and alignment.

⁸ *Id.* at 547, Table 17-33.

⁹ *Albert Valverde*, 36 ECAB 233, 237 (1984).

¹⁰ *Adela Hernandez-Piris*, 35 ECAB 839 (1984); *James T. Rogers*, 33 ECAB 347 (1981).

On the other hand, the Office medical adviser did not provide a reasoned opinion on the issue. He appeared to base his disagreement with Dr. Zamarin on the incorrect belief that July 2, 2001 was the date of the left knee surgery. The date of the left knee surgery was July 18, 2000. Based on the probative medical evidence, the date of MMI was July 2, 2001. The Office, therefore, properly determined the schedule award commenced on July 2, 2001.

LEGAL PRECEDENT -- ISSUE 3

Under 5 U.S.C. § 8101(4), ““monthly pay” means the monthly pay at the time of injury, or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater”

ANALYSIS -- ISSUE 3

The original pay rate for compensation purposes of \$458.38 per week was apparently based on a date of injury of May 1986. The date of injury is not May 1986; appellant reported only that he was aware of the condition in May 1986. The date of injury in a case of continuing exposure to the identified employment factors is the date of last exposure, not the date a claimant may have been aware of the condition.¹¹ Appellant argues that the relevant date is September 22, 2006, the date of examination by Dr. Zamarin and he cites the *Cummings* case in support of his argument. The present case is clearly distinguishable from *Cummings*. In that case, the claimant never stopped working in the job that she alleged caused the employment injury. In determining the date of injury, the Board noted that this could be the date of a medical report used to determine the extent of permanent impairment, if appellant continued to be exposed to employment factors having an adverse effect on his or her injury.¹²

In this case the record indicated that appellant stopped working as a letter carrier on or about July 18, 2000, when he underwent left knee surgery. He returned to light-duty work and worked light duty until he retired from federal employment. There is no indication in Dr. Zamarin’s report that he felt appellant’s impairment continued to be adversely affected by employment after he stopped working as a letter carrier. The date of injury, therefore, would be the date of last exposure or July 18, 2000. This also represents the date disability began. Based on the provisions of 5 U.S.C. § 8101(4), the Office properly determined that the applicable date for determining pay rate was July 18, 2000.

CONCLUSION

The Office properly determined that appellant had a 37 percent left leg impairment. The schedule award properly commenced on July 2, 2001 with a pay rate based on a date of injury of July 18, 2000.

¹¹ See *Barbara A. Dunnivant*, 48 ECAB 517, 519 (1997).

¹² *Patricia K. Cummings*, *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 13, 2006 is affirmed; the decision dated November 22, 2006 is affirmed with respect to the degree of permanent impairment and the period of the award.

Issued: June 19, 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