

On May 29, 2003 appellant filed a Form CA-7 claim for a schedule award based on loss of use of his right lower extremity.

By letter dated June 10, 2003, the Office advised appellant that it required a medical report from a physician containing an opinion as to when he had reached maximum medical improvement and an impairment evaluation indicating the loss of function of the affected body member. Appellant did not submit any additional medical evidence.

By decision dated January 12, 2005, the Office denied a schedule award finding that appellant failed to submit medical evidence in support of his claim.

By letter dated January 19, 2005, appellant's attorney requested reconsideration.

Appellant submitted a June 3, 2005 report from Dr. David D. Dore, Board-certified in orthopedic surgery. He stated:

“[Appellant] underwent bilateral total knee arthroplasties January 18, 2005 and he has done well with the surgeries. I feel that he is current at maximum medical improvement and would rate his right lower extremity impairment at 37 percent, with a whole body impairment of 15 percent, as per [the] American Medical Association, *Guides to the Evaluation of Permanent Impairment*.”

In a report dated November 23, 2001, the Office medical adviser rated appellant at 10 percent impairment for his July 14, 1998 partial medial and lateral meniscectomies under Table 17-33 of the fifth edition of the A.M.A., *Guides*.

On April 13, 2006 the Office granted appellant a schedule award for a 10 percent permanent impairment of the right lower extremity for the period October 1, 1998 to April 20, 1999, for a total of 29.28 weeks of compensation.

By letter dated April 26, 2006, appellant's attorney requested a review of the written record. Appellant did not submit any additional medical evidence with his request.

By decision dated August 28, 2006, an Office hearing representative affirmed the April 13, 2006 Office decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ 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 percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For

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

² 5 U.S.C. § 8107(c)(19).

consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

ANALYSIS

The Office medical adviser properly found that appellant had a ten percent impairment of the right lower extremity based on the partial medial and lateral meniscectomy of the right knee appellant underwent on July 14, 1998, in accordance with Table 17-33 at page 546 of the A.M.A., *Guides*. The only other medical evidence contained in the record is Dr. Dore's June 3, 2005 report. Dr. Dore noted that appellant underwent bilateral total knee arthroplasties on January 18, 2005 and rated a 37 percent right lower extremity impairment and 15 percent whole body impairment. Dr. Dore's report, however, does provide explanation addressing the impairment rating. His report notes surgical procedures which were not authorized by the Office and which have not been established as pertaining to any condition accepted by the Office. Moreover, the report does not conform to the A.M.A., *Guides*, as it does not relate the rating to the applicable tables and charts of the A.M.A., *Guides*.⁴ Dr. Dore did not address how appellant's right knee condition or surgery in 2005 was related to the 1997 injury. He noted the bilateral nature of the total knee replacements and did not explain how the need for surgery was necessitated by appellant's accepted injury. The Board finds that the Office properly relied on the Office medical adviser's determination that appellant has no more than a 10 percent permanent impairment for the right lower extremity based on the partial medial and lateral meniscectomies.

Following the April 13, 2006 decision, appellant requested review of the written record but did not submit any additional medical evidence. There is no probative medical evidence establishing that appellant sustained greater permanent impairment. The Board finds that appellant has no more than a 10 percent permanent impairment to his right lower extremity.

CONCLUSION

The Board concludes that the Office medical adviser correctly applied the A.M.A. *Guides* in determining that appellant has no more than a 10 percent permanent impairment for loss of use of his right lower extremity. The Board will affirm the April 13 and August 28, 2006 Office decisions.

³ 20 C.F.R. § 10.404.

⁴ Further, while Dr. Dore also assessed a whole man impairment, the Act does not allow for "whole man" impairment schedule awards. *Janae J. Tripplette*, 54 ECAB 792 (2003).

ORDER

IT IS HEREBY ORDERED THAT the August 28 and April 13, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: May 16, 2007
Washington, DC

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

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

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