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

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| **G.C., Appellant** | ) | |
| **and** | ) | **Docket No. 08-598** |
| | ) | **Issued: August 11, 2008** |
| **U.S. CAPITOL POLICE, Washington, DC, Employer** | ) | |

*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 December 19, 2007 appellant filed a timely appeal from a November 30, 2007 merit decision of the Office of Workers' Compensation Programs that denied his schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

### ***ISSUE***

The issue is whether appellant met his burden of proof in establishing that he had a ratable permanent impairment of his left lower extremity entitling him to a schedule award.

### ***FACTUAL HISTORY***

On April 11, 2005 appellant, then a 35-year-old police officer, filed a traumatic injury claim stating that he injured his left knee and ankle on the same day when he fell while apprehending an assault suspect. He stopped work on April 12, 2005. In an April 18, 2005 report, Dr. Charles M. Ruland, a Board-certified orthopedic surgeon, diagnosed left knee contusion and bursitis but noted that appellant had no obvious crepitus. On July 25, 2005 he diagnosed left knee contusion and prepatellar bursitis, noting that appellant's range of motion

was full with no crepitus and that he was able to return to full-duty work. In an October 12, 2005 note, Dr. Ruland stated that appellant may have developed degenerative patellar tendon tissue that could be causing his persistent left knee pain. In a November 1, 2005 report, he indicated that appellant's left knee patellar tendinosis had become chronic and recommended surgery. Examination did not reveal crepitus. On November 15, 2005 appellant filed another traumatic injury claim stating that he reinjured his left knee on the same day while wrestling a suspect to the ground.[1] He stopped work the same day. On November 16, 2005 Dr. Ruland advised that appellant could return to work on November 28, 2005. The Office accepted appellant's April 11, 2005 claim for left knee and lower leg contusion and patellar tendinitis. It accepted the November 15, 2005 claim for left knee contusion and chondromalacia.[2]

Appellant underwent an open excision of left knee chronic patellar tendinosis involving the inferior pole of the patella on January 13, 2006.[3] Dr. Ruland performed the procedure and diagnosed left chronic patellar tendinitis involving the inferior pole of the patella. In a March 2, 2006 report, he stated that appellant could return to light-duty work effective March 20, 2006. On June 1, 2006 Dr. Ruland stated that appellant was capable of performing full-duty work.

In a June 16, 2006 report, Dr. Donald I. Saltzman, a Board-certified orthopedic surgeon, noted appellant's history of left knee injuries on April 11 and November 15, 2005 and of surgery on January 13, 2006. He reported that appellant complained of discomfort in kneeling and squatting positions. On physical examination, Dr. Saltzman found that appellant had full and painless range of motion of the left knee and measured equal circumferences of appellant's bilateral thighs and calves. He diagnosed post-traumatic patellar tendinosis of the left knee. Dr. Saltzman did not note any crepitus. He opined that appellant's condition was directly related to his 2005 employment injuries. Dr. Saltzman explained that appellant had continuing mild discomfort about his left knee and as a result found that he had some permanent impairment. He utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition (A.M.A., *Guides*),[4] Table 17-31, which measures arthritis impairments based on roentgenographically determined cartilage intervals. Dr. Saltzman found that appellant had five percent impairment of the left leg, under Table 17-31, based on his subjective symptoms and a history of a direct patellofemoral blow.

On July 3, 2006 appellant claimed a schedule award.

In a November 1, 2006 report, an Office medical adviser reviewed the record and Dr. Saltzman's impairment rating. He noted appellant's surgery on January 13, 2006 and found that appellant would not reach maximum medical improvement until January 13, 2007. The medical adviser recommended that the Office evaluate appellant's schedule award request after January 13, 2007. In an April 6, 2007 follow-up report, he noted that Dr. Saltzman based his

[1] The claim was assigned Office file number 032044584.

[2] On October 24, 2006 the Office combined appellant's two claims, file numbers 032044584 and 252051602, under a single claim, file number 252051602.

[3] On February 8, 2006 the Office authorized the surgery.

[4] A.M.A., *Guides* (5th edition 2005).

June 16, 2006 impairment rating purely on appellant's subjective symptoms and history. The medical adviser explained that subjective symptoms and history were not a proper basis for finding permanent impairment, noting that Dr. Saltzman had not referenced any objective findings in support of his impairment rating. He concluded that appellant had no ratable impairment because the impairment rating was not based on objective findings.

In a May 3, 2007 report, Dr. Saltzman again noted appellant's history of injury and of surgery in January 2006. He stated that appellant had reached maximum medical improvement when he returned to work and was discharged from medical care. Dr. Saltzman noted that appellant's permanent impairment was supported by the fact that his tendinitis required surgical treatment, which resulted in mild residual symptoms. He noted that appellant experienced a direct patellar blow with patellofemoral pain and residual pain. Dr. Saltzman reported examination findings. He did not report any crepitus. Dr. Saltzman reiterated that appellant had five percent impairment of the left lower extremity for a direct patellofemoral blow, based on Table 17-31 of the A.M.A., *Guides*.

On June 28, 2007 appellant again requested a schedule award.

In a September 28, 2007 report, the Office medical adviser reviewed the record and Dr. Saltzman's May 3, 2007 report and impairment rating. He noted that the physician based his impairment rating on Table 17-31 of the A.M.A., *Guides*, which measures impairment based on arthritis conditions. The medical adviser explained that arthritis was not an accepted condition in appellant's case. Moreover, he noted that Dr. Saltzman's physical examination evinced that appellant's knee was fully within normal limits. The medical adviser concluded that Dr. Saltzman's May 3, 2007 report and impairment rating did not provide a proper basis on which to grant appellant's schedule award request.

By decision dated November 30, 2007, the Office denied appellant's schedule award claim.

## ***LEGAL PRECEDENT***

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulation[6] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 implementing regulation as the appropriate standard for evaluating schedule losses.[7]

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999).

[7] *See id.*

## ***ANALYSIS***

The Office accepted appellant's claims for left knee and lower leg contusion and left knee patellar tendinitis and chondromalacia. Appellant claimed a schedule award and provided June 16, 2006 and May 3, 2007 reports from Dr. Saltzman who concluded that appellant had five percent impairment of the left leg based on subjective symptoms and history of a direct patellofemoral blow. In his May 3, 2007 report, Dr. Saltzman clarified that his recommended impairment rating was also based on appellant's January 13, 2006 surgery, an open excision of left knee chronic patellar tendinosis involving the inferior pole of the patella. In both reports, he stated that his impairment rating was based on the A.M.A., *Guides*, Table 17-31.[8] Pursuant to Table 17-31, which rates arthritis impairments based on roentgenographically determined cartilage intervals, usually an x-ray finding of arthritis is necessary for evaluation of impairment. However, a footnote to Table 17.31 at page 544 states: "In an individual with a history of direct trauma, a complaint of patellofemoral pain and crepitation on physical examination, but without joint space narrowing on x-rays, a five percent lower extremity impairment is given."[9] In Dr. Saltzman's May 3, 2007 report, he confirmed that appellant experienced a direct patellar blow with resulting patellofemoral pain and explained that it was on this basis that he applied Table 17-31. However, in neither the June16, 2006 report nor the May 3, 2007 report did he make a specific finding of crepitation, which is a required element for the application of Table 17-31. The Board notes that in reports and treatment notes dated April 18, July 25 and November 1, 2005, Dr. Ruland specifically found that appellant had no crepitation on physical examination.

The Board finds that the medical evidence does not establish that appellant has five percent impairment of the left lower extremity based on Table 17-31 because the examining physicians, Dr. Ruland and Dr. Saltzman, did not note any crepitus on physical examination. Therefore, the Board finds that, although appellant established that he sustained a direct blow which caused patellofemoral pain, he has not shown that he has ratable impairment under Table 17-31 because the medical evidence does not establish that he has crepitus. Additionally, neither appellant's physicians nor the Office medical adviser found any other basis, under the A.M.A., *Guides*, on which to support any ratable impairment of the left leg.

## ***CONCLUSION***

The Board finds that appellant has not met his burden of proof in establishing that he had ratable impairment of the left lower extremity.

[8] A.M.A., *Guides* 544, Table 17-31.

[9] *Id.*; *see L.J.*, 59 ECAB __ (Docket No. 07-1570, issued December 18, 2007).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the November 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2008
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