

Appellant filed a claim for a schedule award. On June 14, 2007 Dr. Arthur L. Eisenstein, an orthopedic surgeon, reported full knee extension and flexion to 125 degrees. There was no instability to varus or valgus stress. Crepitus was present. Dr. Eisenstein diagnosed traumatic arthritis of the right knee. He felt that appellant had a 30 percent scheduled loss of the right lower extremity “based on the patient’s inability to function as a postal worker and persistent symptomatology.”

An Office medical adviser reviewed Dr. Eisenstein’s findings and calculated that appellant had a seven percent impairment of the right lower extremity. He assigned two percent for a torn lateral meniscus and meniscectomy and he assigned five percent for “crepitus on exam[ination] and operative findings of chondromalacia of the patella and medial femoral condyle.” The Office medical adviser added: “If [Dr. Eisenstein] gave x-ray measurements of the joint space further impairment could be calculated.”

In a decision dated December 24, 2008, the Office issued a schedule award for a seven percent impairment of the right lower extremity.

Appellant requested reconsideration and submitted the report of an x-ray examination conducted on August 13, 2008. The report stated: “The joint space within the right patellofemoral articulation measures three millimeters in the region of the medial as well as lateral aspect.”

In a decision dated March 25, 2009, the Office reviewed the merits of appellant’s case and denied modification of its prior decision. It found that the additional evidence did not support an increase in her schedule award.

On appeal, appellant’s representative argues that a three millimeter joint space is not considered normal. Citing Table 17-31, page 544 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), he asks the Board to modify appellant’s schedule award to reflect the increase she is due based on the loss of joint space documented in the x-ray studies.

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.²

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

ANALYSIS

Appellant does not take issue with the seven percent rating she received. Knee flexion to 125, reported by Dr. Eisenstein, her orthopedic surgeon, represents no impairment according to Table 17-10, page 537 of the A.M.A., *Guides*. Table 17-33, page 546, supports that a partial lateral meniscectomy is a two percent impairment of the lower extremity, as the Office medical adviser reported. According to the footnote at Table 17-31, page 544: “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.”³ The record establishes that appellant has seven percent impairment of the right lower extremity as impairment due to arthritis may be combined with a diagnosis-based estimate under the cross-usage chart at Table 17.2.

The issue on appeal is whether the later x-ray measurement warrants an increased award. Appellant’s representative argues that a four millimeter joint space is considered a normal cartilage interval under Table 17-31 and that a three millimeter joint space warrants a seven percent additional impairment to the right lower extremity. The Board has carefully considered this argument and notes that Table 17-31 does not support this contention. The joint he circled for the Board’s benefit is the knee joint, or the space between the femoral condyles and the tibial plateau. However, the joint addressed by the August 13, 2008 x-ray report is the patellofemoral joint, or the space between the patella and the femoral condyles. Table 17-31 provides a three millimeter cartilage interval in the patellofemoral joint represents no impairment to the right lower extremity. The x-ray measurement submitted does not support an increase in impairment to appellant’s knee. The Board will affirm the Office’s March 25, 2009 decision.

CONCLUSION

The Board finds that appellant has no more than a seven percent impairment of her right lower extremity.

³ A.M.A., *Guides* 544 (note to Table 17-31).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2009
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