United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 09-1265**
	)	**Issued: December 23, 2009**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Tucson, AZ, Employer	)	

Appearances:
Appellant, pro se
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 April 16, 2009 appellant filed a timely appeal of a February 10, 2009 schedule award decision of the Office of Workers' Compensation Programs finding a two percent permanent impairment of his right lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a two percent permanent impairment of the right lower extremity for which he received a schedule award.

FACTUAL HISTORY

On February 21, 2008 appellant, then a 31-year-old correctional officer, was injured when he felt a pop in his right knee while walking down stairs at work. He stopped work that day and returned to light duty on March 5, 2008. The Office accepted the claim for internal derangement of the lateral meniscus of the right knee.

In a March 14, 2008 diagnostic report, Dr. James Collins, a diagnostic radiologist, found degenerative changes and an anterior horn lateral meniscus tear of appellant's right knee. In an April 8, 2008 report, Dr. Rex Cooley, an osteopath specializing in orthopedic surgery, diagnosed right derangement of the posterior horn of the lateral meniscus. On May 14, 2008 he performed a right knee subtotal lateral meniscectomy and removed approximately 50 percent of appellant's meniscus primarily over the mid body and lateral part of the anterior third. Dr. Cooley recommended physical therapy. In a November 26, 2008 report, he advised that appellant had reached a stable and stationary point. Dr. Cooley released appellant from care and advised that he sustained seven percent impairment for resection of the lateral meniscus and pain in the knee.

Appellant filed a schedule award claim on December 3, 2008. On December 15, 2008 the Office requested an opinion from Dr. Cooley regarding appellant's permanent impairment according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a January 12, 2009 response, Dr. Cooley indicated that appellant's loss of function was due to pain. He determined that appellant lacked eight degrees flexion that amounted to zero percent impairment. Dr. Cooley determined that a total lateral meniscectomy amounted to nine percent impairment. He also found that appellant had mild to moderate lateral knee pain and difficulty with gait and standing which amounted to one percent impairment. Dr. Cooley noted appellant's range of motion consisted of 135 degrees flexion, 0 degrees extension and no ankylosis. He also noted no varus or valgus deformity of the knee. Dr. Cooley determined that appellant had 10 percent loss of lower extremity length. He further determined 100 percent loss of shock absorption from the meniscectomy and also indicated that appellant had a "complete" lateral meniscectomy. Dr. Cooley advised that appellant reached maximum medical improvement on November 26, 2008.

In a January 15, 2009 report, Dr. Cooley reviewed the A.M.A., *Guides* and determined that, due to a complete total lateral meniscectomy, appellant had nine percent permanent impairment. He further determined that appellant's continued lack of strength in his quadriceps and hamstrings qualified him for another one percent permanent impairment. Dr. Cooley found normal range of motion and continued constant aching rated 3 on a pain scale of 1 to 10. He opined that appellant had a total of 10 percent permanent impairment of the right lower extremity secondary to a total meniscectomy, continued discomfort and pain the right knee with loss of strength.[1]

On January 20, 2009 an Office medical adviser reviewed Dr. Cooley's reports. Although Dr. Cooley indicated nine percent impairment for a total lateral meniscectomy, a review of the operative report indicated that appellant underwent a partial meniscectomy with removal of 50 percent of the meniscus. The medical adviser determined that appellant had two percent impairment of the right lower extremity for undergoing a partial lateral meniscectomy, citing Table 17-33 on page 546 of the A.M.A., *Guides*. He also noted that the A.M.A., *Guides* do not allow for impairment for muscle weakness to be combined with impairment for arthroscopic partial lateral meniscectomy as this was considered redundant and duplicative, citing Table 17-2

[1] A January 9, 2009 report from Dr. Cooley reiterated that appellant had a seven percent impairment due to resection of the lateral meniscus and pain in the knee. However, he retracted this finding in his January 15, 2009 report.

on page 526. The medical adviser concluded that the date of maximum medical improvement was November 26, 2008.

In a February 10, 2009 decision, the Office granted appellant a schedule award for two percent permanent impairment of the right lower extremity. It paid compensation for 5.76 weeks from November 26, 2008 to January 5, 2009.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulations 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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 for evaluating schedule losses and the Board has concurred in such adoption.[3]

ANALYSIS

The Office accepted that appellant sustained internal derangement of the lateral meniscus of the right knee. Appellant subsequently received a schedule award for a two percent permanent impairment of the right lower extremity based on the evaluation of an Office medical adviser upon reviewing reports from Dr. Cooley. The Board finds that the Office medical adviser properly determined appellant's impairment rating.

Appellant submitted reports from Dr. Cooley regarding the degree of impairment to his right lower extremity. On January 12, 2009 Dr. Cooley advised that appellant had nine percent impairment for a total lateral meniscectomy, and one percent impairment for knee pain and difficulty with gait. This report also contained values for appellant's range of motion, including 135 degrees flexion and 0 degrees extension which Dr. Cooley indicated were not ratable.[4] He did not explain how he applied these values under the A.M.A., *Guides*. In a January 15, 2009 report, Dr. Cooley generally referred to the A.M.A., *Guides* to find that appellant had 9 percent impairment for total lateral meniscectomy and 1 percent impairment for lack of strength of his right lower extremity, for a total of 10 percent permanent impairment. Again, however, he did not address how this rating conformed to the A.M.A., *Guides*.[5] Dr. Cooley improperly based his impairment rating on a total lateral meniscectomy; however, his May 14, 2008 operative report

[2] 5 U.S.C. §§ 8101-8193. *See* 5 U.S.C. § 8107.

[3] *See* 20 C.F.R. § 10.404; *R.D.*, 59 ECAB ___ (Docket No. 07-379, issued October 2, 2007).

[4] *See* A.MA., *Guides*, 532, Table 17-10 (5th ed. 2001).

[5] *See Tommy R. Martin*, 56 ECAB 273 (2005) (where the Board found that a physician's impairment calculation not sufficiently supported by the A.M.A., *Guides* is of diminished probative value).

stated that a partial meniscectomy was performed as it noted that about 50 percent of the meniscus was removed.

The Office medical adviser reviewed Dr. Cooley's reports and properly evaluated appellant's right knee impairment.[6] His rating derived from a review of the medical record, noted that appellant underwent a partial lateral meniscectomy. The medical adviser explained that, while Dr. Cooley asserted that appellant should receive impairment based on a total lateral meniscectomy, his May 14, 2008 operative report indicated that only about one half of the meniscus was removed. He applied this to Table 17-33 on page 546 of the A.M.A., *Guides* and to find two percent impairment for this diagnosis-based estimate for a partial lateral meniscectomy. This provision of the A.M.A., *Guides* states that a total medial or lateral meniscectomy is a seven percent impairment of the leg while a partial medial or lateral meniscectomy represents two percent impairment of the leg. The medical adviser also explained that one percent impairment for loss of strength recommended by Dr. Cooley could not be combined with impairment due to the partial lateral meniscectomy based on Table 17-2 on page 526 of the A.M.A., *Guides*. The cross-usage chart lists evaluation methods that may be combined. Dr. Cooley did not note any other basis on which permanent impairment could be rated.

There is no other medical evidence, consistent with the A.M.A., *Guides*, establishing that appellant has greater than two percent impairment of the right knee.

On appeal, appellant contends that he has 10 percent impairment as Dr. Cooley provided substantial reasoning for his rating. However, as noted, a physician's impairment rating must conform to the A.M.A., *Guides* and cite to specific tables and figures that explain how the physician derived the impairment calculation.[7] Dr. Cooley did not support his impairment rating under the A.M.A., *Guides*. Therefore, his opinion is of diminished probative value.

CONCLUSION

The Board finds that appellant has no more than two percent right lower extremity impairment.

[6] *J.Q.*, 59 ECAB ___ (Docket No. 06-2152, issued March 5, 2008) (it is well established that, when the examining physician does not provide an estimate of impairment conforming to the A.M.A., *Guides*, the Office may rely on the impairment rating provided by a medical adviser).

[7] *See supra* notes 3 and 5.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated February 10, 2009 is affirmed.

Issued: December 23, 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