



Board-certified orthopedic surgeon, performed a right knee medial and lateral meniscectomy and debridement of Grade 3 chondromalacia.

On October 23, 2007 appellant filed a claim for a schedule award. By letter dated October 24, 2007, the Office requested that he submit a report from his attending physician describing the extent of any impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

In a report dated November 1, 2007, Dr. DiBenedetto diagnosed status post medial and lateral meniscus tear and surgery. He noted that appellant could perform full activities and had “a little bit of achiness now and then, but really nothing much.” Dr. DiBenedetto found that appellant had no impairment due to weakness, effusion or decreased range of motion. He determined that, according to Table 17-33 on page 546 of the A.M.A., *Guides*, appellant had a 10 percent lower extremity impairment as a result of his partial medial and lateral meniscectomy.

On April 14, 2008 an Office medical adviser reviewed Dr. DiBenedetto’s report and agreed with his rating that appellant had a 10 percent impairment of the right lower extremity due to his lateral and medial meniscectomy according to Table 17-33 on page 546 of the A.M.A., *Guides*. He advised that appellant reached maximum medical improvement on November 1, 2007.

By decision dated May 6, 2008, the Office denied appellant’s claim for a schedule award. The Office noted that on April 30, 2003 he received a schedule award for a 22 percent permanent impairment of the right lower extremity under file number xxxxxx175 and was not entitled to an additional schedule award.

On April 8, 2009 appellant requested reconsideration. In a report dated September 29, 2008, Dr. Spencer D. Greendyke, a Board-certified orthopedic surgeon, diagnosed status post employment-related right medial meniscus tear and partial medial and lateral meniscectomies. He advised that appellant had a 10 percent lower extremity impairment due to his partial medial and lateral meniscectomies under Table 17-33 on page 546 of the A.M.A., *Guides*. Dr. Greendyke opined that the 10 percent impairment rating “is absolutely positively rated separate and not included with the prior rating.”

By decision dated April 10, 2009, the Office denied appellant’s request for reconsideration after finding that the evidence submitted was irrelevant and thus insufficient to warrant reopening his case for further merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Federal Employees’ Compensation Act,<sup>1</sup> and its implementing federal regulations,<sup>2</sup> 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

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>3</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>4</sup>

The Act and its implementing regulations provide for the reduction of compensation for subsequent injury to the same scheduled member.<sup>5</sup> Benefits payable under section 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained a medial meniscal tear of the right knee due to a September 18, 2006 employment injury. On May 29, 2007 he underwent a right medial and lateral meniscectomy and debridement of Grade 3 chondromalacia.

On October 23, 2007 appellant requested a schedule award. In a November 1, 2007 impairment evaluation, Dr. DiBenedetto found that he had no impairment due to loss of range of motion, weakness or effusion. He determined that appellant had a 10 percent permanent impairment of the right lower extremity as a result of his partial medial and lateral meniscectomy according to Table 17-33 on page 546 of the A.M.A., *Guides*. On April 14, 2008 an Office medical adviser reviewed Dr. DiBenedetto's report and concurred with his finding that appellant had a 10 percent permanent impairment of the right lower extremity due to his medial and lateral meniscectomy.<sup>7</sup>

In a decision dated May 6, 2008, the Office denied appellant's claim for an increased schedule award. It noted that he had previously received a schedule award for a 22 percent impairment of the right lower extremity on April 30, 2003 under file number xxxxxx175. The Office concluded that appellant did not show that he had more than a 22 percent permanent impairment of the right lower extremity. However, it did not consider whether appellant's 10 percent impairment due to his partial medial and lateral meniscectomy duplicated the compensation previously paid for the 22 percent impairment of the right lower extremity or whether it should be combined with the prior award.<sup>8</sup> Benefits payable under section 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different

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<sup>3</sup> *Id.* at § 10.404(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>5</sup> 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).

<sup>6</sup> *Id.* at § 10.404(c)(1), (2).

<sup>7</sup> A.M.A., *Guides* 546, Table 17-33.

<sup>8</sup> *See* 20 C.F.R. § 10.404(c)(1), (2).

parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.<sup>9</sup> As the Office did not adequately explain why appellant's 10 percent impairment due to his partial medial and lateral meniscectomy duplicated the compensation he previously received under a separate file number, the Board finds that the case is not in posture for decision. Accordingly, the case will be remanded to the Office to obtain clarification from the Office medical adviser regarding the extent of appellant's right lower extremity impairment and whether the latest rating would in whole or in part duplicate the prior schedule award.

**CONCLUSION**

The Board finds that the case is not in posture for decision.<sup>10</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 10, 2009 and May 6, 2008 are set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: December 22, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>9</sup> *Id.*

<sup>10</sup> In view of the Board's disposition of the merits, the issue of whether the Office properly denied appellant's request for reconsideration under section 8128 is moot.