

x-rays of appellant's right knee showed some mild osteoarthric changes in the right knee but noted that the changes did not "look too bad in comparison to the left knee."

In a May 23, 2007 report, appellant's physical therapist indicated that appellant had a nine percent impairment of the right lower extremity. He applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). The physical therapist noted that appellant qualified for a two percent impairment of his lower extremity for his arthroscopic partial medial meniscectomy and a seven percent lower extremity impairment rating for his right knee post-traumatic degenerative changes over the right medial femoral condyle and medial plateau as a result of landing directly on the medial aspect of his right knee during his fall.¹ On June 13, 2007 Dr. Stephen N. Barnes, a Board-certified orthopedic surgeon, indicated that he agreed with this rating.

On September 4, 2007 appellant filed a claim for a schedule award.

On October 29, 2007 the Office asked the Office medical adviser to review appellant's record and calculate his impairment to his right lower extremity. The medical adviser responded on October 30, 2007 that appellant had two percent impairment due to his partial medial meniscectomy.² However, he disagreed with the additional seven percent impairment recommended for arthritis by Dr. Barnes because he failed to supply the required x-ray report with measurements of residual cartilage intervals. The medical adviser noted that, if this report was supplied, he would reconsider his assessment.

By letter dated November 2, 2007, the Office asked Dr. Barnes to respond to the Office medical adviser's report. Dr. Barnes responded by submitting a report dated January 9, 2008 indicating that appellant had five millimeters of space on the medial side of his right knee pursuant to x-rays.

Dr. Barnes' comments were referred to a different Office medical adviser who indicated in comments dated March 19, 2008 that, pursuant to the A.M.A., *Guides*, there is no impairment for five millimeters of cartilage. Accordingly, the Office medical adviser recommended a schedule award for two percent impairment to the right lower extremity.

By decision dated March 24, 2008, the Office issued a schedule award for two percent impairment of the right lower extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees

¹ A.M.A., *Guides* 544, Table 17-31.

² *Id.* at 546, Table 17-33.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

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 regulations as the appropriate standard for evaluating schedule losses.

ANALYSIS

The Office accepted appellant's claim for right knee strain and right medial meniscus tear as a result of appellant's work-related injury of March 19, 2006. Both Dr. Barnes and the Office medical advisers properly agree that appellant is entitled to a two percent impairment of his lower extremity for his arthroscopic partial medial meniscectomy.⁵ A dispute arose however as to whether appellant was entitled to an additional schedule award for an arthritic impairment. Dr. Barnes initially indicated that appellant was entitled to an additional seven percent lower extremity impairment rating for his right knee post-traumatic degenerative changes over the right medial femoral condyle and medial plateau as a result of landing directly on the medial aspect of his right knee during the fall.⁶ When the case was first referred to the Office medical adviser, he indicated that he could not agree with this impairment rating because Dr. Barnes failed to supply the required x-ray report with measurements of residual cartilage intervals. Dr. Barnes responded to these comments by indicating that appellant had five millimeters of space on the medial side of his right knee pursuant to x-rays. However, when the case was referred to a new Office medical adviser, he properly noted that the A.M.A., *Guides* allow no impairment for five millimeters of cartilage.⁷ Accordingly, Dr. Barnes' opinion that appellant had seven percent impairment due to arthritic impairments based on x-rays is not supported by the A.M.A., *Guides*. The Office medical adviser properly interpreted the A.M.A., *Guides* and recommended a schedule award based on a two percent impairment of the right lower extremity based on appellant's partial medial meniscectomy. As the Office medical adviser provided the only medical opinion supported by the A.M.A., *Guides* his opinion is entitled to decisive weight.

CONCLUSION

The Board finds that appellant has not established that he has greater than two percent impairment to his right lower extremity.

⁵ A.M.A., *Guides* 546, Table 17-33.

⁶ Dr. Barnes cites to A.M.A., *Guides* 544, Table 17-31 for support.

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 21, 2008 is affirmed.

Issued: February 2, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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