



By decision dated December 18, 2007, the Office found that appellant's earnings as a modified carrier fairly and reasonably represented his wage-earning capacity and reduced his compensation benefits to zero. The hearing representative reversed the Office's December 18, 2007 wage-earning capacity determination by decision dated March 14, 2008. In a decision dated July 11, 2008, the Office reduced appellant's compensation benefits to zero as he was currently working as a modified city carrier and that this position fairly and reasonably represented his wage-earning capacity.<sup>1</sup>

Appellant requested a schedule award on January 18, 2008. On November 21, 2007 Dr. Stodghill reported that appellant had 22 degrees of extension lag and 125 degrees of flexion. He stated that appellant may improve slightly. In a note dated January 17, 2008, Dr. Stodghill opined that appellant had reached maximum medical improvement on November 21, 2007. He noted that in accordance with the A.M.A., *Guides* a partial medial meniscectomy was 2 percent impairment, mild laxity of the anterior cruciate ligament was 7 percent impairment and that 22 degrees of extension lag was a flexion contracture of greater than 20 degrees or 35 percent lower extremity impairment for a total impairment rating of 39 percent. The Office medical adviser reviewed the medical records on January 25, 2008 and stated that appellant had two percent impairment due to partial medial meniscectomy and seven percent impairment due to anterior cruciate laxity. He further stated, "[I]t is stated that claimant has 22 degrees extension lag which [attending physician] equates as a contracture. A flexion contracture results in 20 percent [permanent impairment] of extremity.... Please request [a] clarification...."

The Office requested additional information from Dr. Stodghill by letter dated January 29, 2008. Dr. Stodghill responded on March 12, 2008 and stated that "an extension lag would be the exact same as a flexion contracture." He opined that his prior rating was correct. The Office medical adviser reviewed this report on June 17, 2008 and stated that an extension lag was "frequently the sign of inadequate physical therapy...." He recommended a second opinion evaluation.

The Office referred appellant for a second opinion evaluation on July 8, 2008 with Dr. John Lamb, a Board-certified orthopedic surgeon. In a report dated July 30, 2008, Dr. Lamb related appellant's history of injury and medical history. On physical examination he found that appellant lacked 10 degrees of full extension even with moderate pressure and that appellant had flexion to 117 degrees. Dr. Lamb noted that appellant did not have significant ligament laxity but complained of pain with motion. He noted one-half inch atrophy of the left thigh. Dr. Lamb found that appellant had 2 percent impairment of the lower extremity due to partial medial meniscectomy, 20 percent impairment due to limitation of extension, and 3 to 8 percent impairment of the lower extremity due to mild thigh atrophy.

The Office medical adviser reviewed this report on August 12, 2008 and stated that, in accordance with the A.M.A., *Guides*, diagnosis-based estimates and loss of range of motion could not be combined and appellant was only entitled to 20 percent impairment of the left lower extremity due to loss of range of motion. He further noted that loss of range of motion and atrophy impairments could not be combined in accordance with the A.M.A., *Guides*.

---

<sup>1</sup> Appellant, through his attorney, did not request that the Board review this decision on appeal. Therefore the Board will not adjudicate the issue of appellant's wage-earning capacity in this decision.

By decision dated September 10, 2008, the Office granted appellant a schedule award for 20 percent impairment of his left lower extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulations<sup>3</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 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.<sup>4</sup> Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>5</sup>

The Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>6</sup> The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician of an Office medical adviser or consultant, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case.<sup>7</sup>

### **ANALYSIS**

Appellant sustained a left knee injury as a result of his accepted employment injury. His attending physician, Dr. Stodghill, a Board-certified orthopedic surgeon, performed a partial medial meniscectomy and anterior cruciate ligament repair. Dr. Stodghill found that appellant reached maximum medical improvement on November 21, 2007 and reported findings of 2 percent impairment due to partial medial meniscectomy, 7 percent impairment due to mild laxity of the anterior cruciate ligament and flexion contracture of 22 degrees or 35 percent impairment for a total impairment rating of 39 percent. The Office referred appellant for a second opinion evaluation with Dr. Lamb, a Board-certified orthopedic surgeon, who reported 10 degrees of flexion contracture, no significant ligament laxity and mild thigh atrophy. Dr. Lamb

---

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> *Id.*

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

<sup>6</sup> 5 U.S.C. §§ 8101-8193, 8123.

<sup>7</sup> 20 C.F.R. § 10.321.

concluded that appellant had 2 percent impairment due to partial medial meniscectomy, 20 percent impairment due to loss of extension and 3 to 8 percent impairment due to mild thigh atrophy.

There is disagreement between Dr. Stodghill, appellant's attending physician and the Office referral physician, Dr. Lamb, regarding the nature and extent of appellant's physical impairments. Dr. Stodghill found 22 degrees of flexion contracture while Dr. Lamb found only 10 degrees. He found mild anterior cruciate ligament laxity warranting seven percent impairment while Dr. Lamb found no ratable impairment due to ligament laxity. Due to the conflict of medical opinion evidence regarding the findings on physical examination, the Office must refer appellant to an appropriate Board-certified physician along with a statement of accepted facts and a list of specific questions to resolve the conflict and provide clear physical findings regarding appellant's left lower extremity which can be correlated with the A.M.A., *Guides*.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision due to an unresolved conflict of medical opinion evidence regarding the nature and extent of appellant's left lower extremity permanent impairment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 10, 2008 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: July 6, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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