

**United States Department of Labor
Employees' Compensation Appeals Board**

M.S., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
SHIPYARD, Philadelphia, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 09-727
Issued: July 23, 2009**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 22, 2009 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated February 12 and September 17, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied appellant's claim for an additional schedule award for his right lower extremity.

FACTUAL HISTORY

Appellant, a 28-year-old heavy equipment operator, injured his right knee while bending over to pick up an object on July 17, 1987. He filed a claim for benefits, which the Office accepted for torn right medial meniscus.

On December 2, 1991 the Office granted appellant a 32 percent permanent impairment of the right lower extremity for the period October 2, 1991 to May 9, 2003, for a total of 92.16 weeks of compensation.

On September 24, 2002 Dr. Mario J. Arena, Board-certified in orthopedic surgery and appellant's treating physician, performed arthroscopic surgery on appellant to repair a torn right medial meniscus. He performed a partial medial meniscectomy with chondroplasty of the lateral femoral condyle, chondroplasty of the patella and chondroplasty of the medial femoral condyle, with resection of medial plica.

On June 20, 2003 appellant filed a Form CA-7 claim for a schedule award, requesting compensation for additional permanent impairment for a partial loss of use of his right lower extremity.

In a report dated September 15, 2003, Dr. Arena found that appellant had 45 percent permanent impairment of the right lower extremity. He derived at this rating by calculating "impairment of function due to weakness, atrophy, pain or discomfort" of 18 percent, in addition to 27 percent residual impairment from appellant's 2002 medial meniscectomy. Dr. Arena found that appellant reached maximum medical improvement as of September 15, 2003.

By decision dated October 9, 2003, the Office denied the claim for an additional schedule award. It stated that the medical evidence did not support an increase in the impairment already awarded since the prior schedule award included ratings for a meniscectomy, anterior cruciate ligament tear and pain, the three areas Dr. Arena covered in his September 15, 2003 report.

By letter dated October 30, 2003, appellant's attorney requested an oral hearing, which was held on June 30, 2004.

By decision dated October 18, 2004, an Office hearing representative set aside the October 9, 2003 Office decision and remanded for the Office medical adviser to review Dr. Arena's September 24, 2002 operative report and impairment rating and provide an impairment rating consistent with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). The hearing representative instructed the Office medical adviser to cite the applicable tables and references of the A.M.A., *Guides* in arriving at his determination and to provide his reasons for any inclusion or exclusion of impairment factors provided by Dr. Arena.

The Office found that there was a conflict in the medical evidence between the Office medical adviser and Dr. Arena regarding the proper degree of permanent impairment from appellant's accepted right knee condition. It referred appellant to Dr. E. Michael Okin, Board-certified in orthopedic surgery, who found in a January 28, 2005 report that appellant had a 62 percent impairment of the right lower extremity pursuant to the A.M.A., *Guides*. Dr. Okin calculated this impairment based on a three millimeter cartilage interval, noted in Dr. Arena's September 2002 operative report, which yielded a 7 percent lower extremity impairment under Table 17-31 at page 544 of the A.M.A., *Guides*; severe cruciate and collateral ligament laxity, which produced a 37 percent impairment under Table 17-33 at page 546, a 10 percent impairment for partial medial and lateral meniscectomy and an 8 percent impairment for atrophy at Table 17-6, page 530.

On March 2, 2005 the Office granted appellant a schedule award for a 62 percent permanent impairment of the right lower extremity for the period January 23, 2005 to March 10, 2006, for a total of 57.60 weeks of compensation.

By letter dated March 9, 2005, appellant's attorney requested reconsideration. Counsel argued that there was no indication in the record that appellant had ever filed a claim for an additional award. He further contended that, since appellant was currently receiving a \$1,441.00 monthly loss of wage-earning capacity payment, he would only receive a net award of \$6,669.00 during the course of the schedule award. Counsel noted that, since appellant's total schedule award for the 20 percent impairment was \$30,038.40, it was not appropriate to pay him the award at that time, given that he was receiving monthly wage-loss payments of \$1,441.00.

By decision dated March 24, 2005, the Office denied the request for modification. It rejected appellant attorney's argument that the case file contained no indication that appellant had not made a claim for an additional schedule award. The Office stated that the file clearly showed appellant had completed, signed and submitted a Form CA-7 dated June 20, 2003, on which he had checked the box indicating that he was claiming a scheduled award. It noted that appellant had further evidenced his intention to claim a schedule award by requesting a hearing after the Office initially rejected the claim in its October 9, 2003 decision.

The Office also rejected counsel's contention that appellant's intentions were manifested by his request to continue receiving wage-loss benefits in lieu of compensation for a schedule award. It noted that it stopped paying wage-loss benefits effective January 22, 2005 and began paying appellant's schedule award as of January 23, 2005. The Office pointed out that, contrary to counsel's contention, appellant's wage-loss compensation payments were merely being deferred until after payment of the schedule award was completed, not reduced. It further noted that appellant was entitled to apply to receive any Office of Personal Management (OPM) disability money to which he was entitled during the period of the award, to compensate for the fact that his wage-loss benefits were stopped during the award.

In a decision dated September 12, 2005, the Office issued an amended schedule award, finding that appellant was actually entitled to an award based on 52 percent right lower extremity impairment, for an additional 20 percent more than the original award.

By letter dated September 16, 2005, appellant's attorney requested an oral hearing, which was held on March 3, 2006. At the hearing, appellant acknowledged that he filed a Form CA-7 claiming a schedule award; however, he alleged that he did so because an Office claims examiner had advised him to do so in order to claim compensation in connection with his September 2002 knee surgery. Counsel argued that the schedule award should not have been paid because appellant was receiving regular, ongoing compensation for loss of wage-earning capacity at that time and his receipt of the schedule award in lieu of compensation for loss of wage-earning capacity resulted in a net loss of \$6,669.00. He stated that if he had been representing appellant at that time he would have recommended that appellant not file the schedule award claim, as it was against his best interest. Counsel stated that he asked the Office to hold the schedule award in abeyance, but the Office had denied this request. He contended that the situation in this case, where appellant was receiving compensation for loss of wage-earning capacity, then receives a schedule award, was similar to when a claimant was receiving a

schedule award and has a claim accepted for a recurrence of disability, in such cases the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(3)¹ mandates that the schedule award payment be suspended during the period of the recurrence of disability. Counsel argued that the Office should adjudicate this case in a similar manner.

Appellant's attorney further argued that the Office improperly reduced appellant's schedule award from one based on a 62 percent impairment to one based on a 52 percent impairment. Counsel contended that the Office erred by issuing an adjusted award without first seeking clarification from Dr. Okin, whose findings provided the basis for the award.

By decision dated October 16, 2007, an Office hearing representative set aside the September 16, 2005 Office decision. He found that the Office erred and acted prematurely in amending appellant's schedule award from one based on a 62 percent impairment to one based on a 52 percent impairment without first referring the case back to Dr. Okin for clarification of his findings. The hearing representative also noted that Dr. Okin did not appear to address the issue of whether appellant has reached maximum medical improvement, and if so, on what date. He indicated that this was significant since appellant's attorney had requested abeyance of the schedule award on that basis. The hearing representative, therefore, remanded the case, and instructed the district Office to ask Dr. Okin to clarify and explain his schedule award calculation, specifically with regard to his use of the Combined Values Chart in calculating the proper percentage of right upper extremity impairment, as noted by the Office in its amended September 12, 2005 decision. He instructed the district Office to issue a *de novo* determination regarding the proper impairment rating of the claimant's right lower extremity under the A.M.A., *Guides*, and to determine the date of maximum medical improvement.²

The hearing representative rejected the argument advanced by appellant's attorney that the Office should not have processed or should have suspended payment of the schedule award because the claimant was in receipt of wage-loss compensation. He stated that the section of the procedure manual counsel cited pertained to cases where a claimant sustains a recurrence of disability in the middle of the schedule award and was therefore not applicable to the instant case. The hearing representative found that appellant was familiar with schedule award claims, having previously received a schedule award, and was fully aware that when he filed the Form CA-7 on June 2003 and checked the box requesting such as award the Office would undertake to process his claim. He stated that there was no evidence in the record supporting that appellant was coerced into filing for a schedule award or that he did not file the claim of his own volition. In addition, by doing so appellant received a substantial increase in his schedule award. The hearing representative stated that, while appellant was prohibited from receiving dual compensation benefits for the same period, and his compensation for a schedule award was less than that he would have received for wage-loss compensation during the same period, he failed to show that he was otherwise disadvantaged by deferring payment of the schedule award.

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(3)(March 1995, November 1998).

² The hearing representative stated that, if Dr. Okin did not provide the required clarification in his supplemental report, the district Office should refer appellant, and the case file to a new impartial examiner.

He noted that appellant's wages had remained at the same level since 2002 and there was no projected date upon which he was expected to return to a job with earnings equal to or higher than that he earned with the employing establishment.

In a supplemental report dated November 26, 2007, Dr. Okin stated:

“[T]he impairment rating is based on a 62 percent impairment of the right lower extremity.... That was based on Table 17-3 of the A.M.A., *Guides* [at] [page] 527.

“In order to create an impairment rating, the patient has to have reached maximum medical improvement. Therefore, [appellant] reached maximum medical improvement as of the date of my exam[ination] which was January 19, [20]05.”

In a report dated November 29, 2007, an Office medical adviser stated that there was an error in the previous Office impairment calculation of a total 52 percent right lower extremity impairment, which utilized the Combined Values Chart. He noted that Dr. Okin recommended 7 percent impairment rating for a three millimeter cartilage interval, 37 percent for severe anterior cruciate and medial collateral ligament laxity, 10 percent for medial and lateral meniscectomy, and 8 percent for atrophy. The Office medical adviser stated that this calculation was incorrect because the subsection at page 526 of the A.M.A., *Guides*, Table 17-2, *Guide to Appropriate Combination of Evaluation Methods*, states that atrophy cannot be combined with meniscectomy, ligament laxity and arthritis; therefore, the correct calculation based on the A.M.A., *Guides* should be a combination of 37 percent and 10 percent, as opposed to 7, 37, 10 and 8. This equaled a combined value of 47 percent impairment. The Office medical adviser concluded that, although Dr. Okin continued to rate a 62 percent impairment for appellant's right lower extremity and although appellant had already received compensation for a 52 percent impairment, he would recommend no further adjustments to appellant's overall schedule award. He advised that the date of maximum medical improvement should be January 19, 2005, as recommended by Dr. Okin.

The Office determined that Dr. Okin did not provide sufficient clarification or medical rationale in his November 26, 2007 supplemental report. On December 18, 2007 it therefore referred appellant to a new referee examiner, Dr. Gregory S. Maslow, Board-certified in orthopedic surgery, to resolve the outstanding conflict in the medical evidence.

By letter dated January 7, 2008, appellant's attorney acknowledged that he had received the Office's December 18, 2007 letter scheduling a referee examination with Dr. Maslow. Counsel did not raise any objections to Dr. Maslow's appointment.

In a January 15, 2008 report, Dr. Maslow found that appellant had a 37 percent right lower extremity pursuant to the A.M.A., *Guides*. He accorded 7 percent impairment for arthritis in the right knee, 25 percent impairment for anterior cruciate laxity, which he rated as severe and 10 percent for the medial and lateral meniscectomy, which equaled 37 percent impairment under the Combined Value Chart. Dr. Maslow concurred with the Office medical adviser's finding that

the A.M.A., *Guides* do not permit a rating for atrophy to be combined with a rating for arthritis or diagnosis-based estimate.

In a January 14, 2008 report, Dr. Arena stated on examination that there was laxity of the right knee with the positive Lachman's maneuver, positive pivot shift, no calf tenderness and no effusion. He noted no tenderness about the right knee and stated that the distal neurovascular was normal.

In a January 31, 2008 report, the Office medical adviser stated:

"The physical examination by Dr. Maslow indicated that the radiologic findings for arthritis were mild, justifying only seven percent impairment for the lower extremity compared to 37 percent based upon Dr. Okin's interpretation of arthritis because of a three mm [millimeter] cartilage interval. This is a major difference increase comparing Dr. Okin's report and Dr. Arena's report as it related to interpretation of the x-ray findings.

"According to the A.M.A., *Guides* ... [at] page 544, Table 17-31: *Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals*, [a] three mm cartilage interval is equivalent to seven percent impairment. That would be correct as to Dr. Maslow's observation.

"For cruciate laxity Dr. Maslow recommended a severe cruciate laxity that correctly was interpreted based upon page 546, Table 17-33: *Impairment Estimates For Certain Lower Extremity Impairments*, as to be 25 percent impairment. This is appropriate for anterior cruciate laxity.

"Dr. Mario Arena, the treating orthopedic surgeon[,] who examined the patient January 14, [20]08 one day before Dr. Maslow's examination indicated that there was laxity with a positive pivot shift and positive Lachman's maneuver, and this would be consistent with Dr. Maslow's examination.

"Dr. Maslow also stated correctly, based upon page 546, Table 17-33, the medial and lateral partial medial meniscectomy represent 10 percent impairment. He utilizes page 604, *The Combined Values Chart*, combining 25, 10 and 7 for a total of 37 percent impairment.

"My reading of *The Combined Values Chart*, page 604, combines 25 plus 10 equals 33 percent and 33 percent plus 7 equals 38 percent[,] [i]n contrast to 37 percent as noted by Dr. Maslow.

"For the reasons stated on November 29, [20]07, I noted that Dr. Okin incorrectly combined atrophy with the arthritis estimate, and, therefore, Dr. Okin's recommendations cannot be accepted in that regard.

"However, using Dr. Okin's actual examination and making the appropriate corrections as noted in my previous memorandum we could have accepted 47

percent impairment, utilizing Dr. Okin's examination. However, [appellant] was already awarded 52 percent.

"Based on the most recent examination both Dr. Arenas examination and Dr. Maslow's examination would justify 38 percent impairment.

"Therefore, for the reasons stated in my memorandum of November 29, 2007 as well as the rationale as outlined above, it is my recommendation that this claimant not receive any greater than 52 percent than [he] has already been awarded." (Emphasis in the original.)

By decision dated February 12, 2008, the Office found that appellant was not entitled to an additional schedule award greater than that which he had already received. It found that Dr. Maslow's referee opinion represented the weight of the medical evidence.

By letter dated February 15, 2008, appellant's attorney requested an oral hearing, which was held on July 29, 2008. At the hearing, counsel reiterated the arguments advanced at the March 3, 2006 hearing regarding the propriety of the schedule award and contested the Office's determination denying an award for additional impairment greater than the 52 percent already awarded. He contended that Dr. Maslow's January 15, 2008 report was not sufficiently well reasoned or thorough to merit the special weight of an impartial medical examiner. Counsel specifically noted that Dr. Maslow did not test for range of motion impairment, did not indicate he did any strength testing and that his finding of severe cruciate laxity should have yielded 37 percent impairment, as opposed to the 25 percent impairment he calculated, under Table 17-33 at page 546 of the A.M.A., *Guides*. He also argued that there was no indication in the Office's December 18, 2007 notification of an impartial examination that it properly selected Dr. Maslow from the Physicians Directory Service (PDS).

By decision dated September 17, 2008, an Office hearing representative affirmed the February 12, 2008 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁴ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.⁵

³ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁴ *Id.* at § 8107(c)(19).

⁵ 20 C.F.R. § 10.404.

Section 8123(a) of the Act provides that “if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination.”⁶ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.

Board case precedent provides that, when the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist’s opinion requires clarification or elaboration, it must secure a supplemental report from the specialist to correct the deficiency in his original report. Only when the impartial specialist is unable to clarify or elaborate on his original report or if his supplemental report is incomplete, vague and speculative or lacking in rationale, should the Office refer the claimant to a second impartial specialist.⁷

ANALYSIS

In this case, Dr. Maslow, the impartial medical specialist, determined that appellant had a 37 percent impairment of the right lower extremity based on the A.M.A., *Guides*. The Office medical adviser relied on Dr. Maslow’s impairment findings regarding arthritis, medial and lateral partial medial meniscectomy, and anterior cruciate laxity. He concurred with Dr. Maslow that appellant was entitled to a seven percent impairment for arthritis, correctly noting that the A.M.A., *Guides* at page 544, Table 17-31, *Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals*, the three millimeter cartilage interval found by Dr. Okin based on x-ray and examination yielded a seven percent impairment. In addition, the Office medical adviser agreed with Dr. Maslow’s findings of 25 percent impairment for severe cruciate laxity and 10 percent impairment for medial and lateral partial medial meniscectomy, as indicated by Table 17-33 at page 546, *Impairment Estimates For Certain Lower Extremity Impairments*. Utilizing the Combined Values Chart, he calculated 38 percent right lower extremity impairment. As appellant had already been granted a 52 percent schedule award, the Office medical adviser concluded that appellant was not entitled to any additional impairment of the right lower extremity based on the A.M.A., *Guides*.

The Board finds that the Office properly determined in its February 12, 2008 Office decision that appellant was not entitled to any additional award for impairment to his right lower extremity. It properly found that Dr. Maslow’s referee opinion represented the weight of the medical evidence and merited the weight of an impartial medical examiner. The Office medical adviser combined, utilizing the Combined Values Chart of the A.M.A., *Guides*,⁸ the arthritis, partial meniscectomy and cruciate laxity impairments to arrive at a right lower extremity impairment of 37 percent. While Dr. Maslow and the Office medical adviser incorrectly rated

⁶ 5 U.S.C. § 8123(a); see also *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁷ See *Nancy Keenan*, 56 ECAB 687 (2005).

⁸ A.M.A., *Guides* 604.

severe cruciate laxity at 25 percent instead of 37 percent, the stated amount for severe cruciate laxity impairment as set forth at Table 17-33, the Board finds that such error is harmless. The Board notes that even with an increase of 12 percent, appellant's total impairment for the right lower extremity is still less than the 52 percent he had already been awarded. The findings of Dr. Maslow and the Office medical adviser were proper and in conformance with the protocols of the A.M.A., *Guides* in all other respects.

The Board rejects the argument by appellant's attorney that this case should be treated similarly to the case where a claimant was receiving a schedule award and has a claim accepted for a recurrence of disability. The section of the Federal (FECA) Procedure Manual at Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(3)⁹ is unambiguous and applies only to cases where appellant's schedule award is interrupted by a recurrence of disability. The Board also rejects counsel's argument that the Office erred by going forward and processing appellant's schedule award claim, as appellant clearly indicated his intentions in the June 20, 2003 Form CA-7. In addition, the Board rejects counsel's contention that Dr. Maslow erred by failing to rate additional impairments for range of motion and strength. The Board notes that Table 17-2 of the A.M.A., *Guides* expressly prohibits an award for impairments based on gait derangement, muscle atrophy, muscle strength (loss), range of motion loss or ankylosis in combination with an impairment due to a diagnosis-based estimate (resection arthroplasty).¹⁰

Appellant continues to allege that the opinion of Dr. Okin supported a greater impairment rating of the right lower extremity. However, the Office, in conformance with its procedures, found that Dr. Okin failed to provide sufficient clarification or medical rationale of his January 28, 2005 referee report in his November 26, 2007 supplemental report. It referred appellant to a new impartial examiner, Dr. Maslow, who found in his January 15, 2008 report that appellant had a 37 percent right lower extremity impairment stemming from his accepted right knee condition. The Office medical adviser relied on Dr. Maslow's report, which resolved the conflict in the medical evidence regarding whether appellant had sustained additional impairment from his accepted right knee condition and represented the weight of the medical evidence. Therefore, the Office properly determined that appellant was not entitled to an additional schedule award.

Following the February 12, 2008 decision, appellant's attorney requested an oral hearing and argued that the Office did properly select Dr. Maslow from the PDS. A physician selected by the Office to serve as an impartial medical specialist should be wholly free to make a completely independent evaluation and judgment. To achieve this, the Office has developed specific procedures for the selection of impartial medical specialists designed to provide safeguards against any possible appearance that the selected physician's opinion is biased or prejudiced. The procedures contemplate that impartial medical specialists will be selected from Board-certified specialists in the appropriate geographical area on a strict rotating basis in order

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(3) (March 1995, November 1998).

¹⁰ See *James R. Taylor*, 56 ECAB 537 (2005). In this case, the Board held that the principle enunciated in Table 17-2, page 526 for not combining these awards in lower extremity impairments also applies to upper extremity impairments.

to negate any appearance that preferential treatment exists between a particular physician and the Office.¹¹ The Federal (FECA) Procedure Manual provides that the selection of referee physicians (impartial medical specialists) is made through a strict rotational system using appropriate medical directories. The procedure manual provides that the PDS should be used for this purpose wherever possible.¹² The PDS is a set of stand-alone software programs designed to support the scheduling of second opinion and referee examinations.¹³ The PDS database of physicians is obtained from the American Board of Medical Specialties Directory of Board-certified Medical Specialists (ABMS) which contains the names of physicians who are Board-certified in certain specialties.

In this case, the Office's December 2007 referral letters, and memoranda, do not indicate that the referral source for the selection of Dr. Maslow was the PDS. However, there is no evidence that the Office did not select Dr. Maslow from the PDS. In addition, the Board notes that counsel did not raise a timely objection to the impartial medical examiner until his appeal. The record indicates that on January 7, 2008 appellant's representative confirmed that he was in receipt of the Office's December 18, 2007 scheduling notice and the pertinent information pertaining to the January 15, 2007 examination with Dr. Maslow, he requested a copy of the statement of facts and the correspondence to the physician. Counsel was subsequently provided with the requested information. He did not object to Dr. Maslow's selection until after February 12, 2008, the date the Office issued its decision denying an additional schedule award, and waited five more months -- July 16, 2008, the date of the hearing -- to do so. Counsel did not provide a valid reason other than to make a general allegation that there was no indication in the file that the PDS was utilized and that Dr. Maslow was selected at random.¹⁴ The Board finds that counsel did not raise a timely objection or provide a valid reason for this stated objection. Therefore, the evidence does not establish an error in the selection of Dr. Maslow as an impartial medical examiner.¹⁵

Appellant's representative also alleged that Dr. Maslow's report could not carry the weight of the evidence. However, as determined above, the Board finds that Dr. Maslow's opinion is thorough and well rationalized and based on a complete and accurate factual and medical background. Accordingly, it is entitled to special weight.

As there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b (May 2003). See also *Willie M. Miller*, 53 ECAB 697 (2002).

¹² *Id.*

¹³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.7 (May 2003).

¹⁴ Counsel also noted that one of the Office memorandums, dated December 17, 2007, indicated that appellant was being referred for a second opinion examination. However, all of its subsequent notices and letters clearly stated that appellant was scheduled for a referee medical examination with an impartial medical examiner, Dr. Maslow.

¹⁵ *Supra* note 11 (appellant did not raise an objection to selection of referee physician until after claim was denied and raised only general allegations the claim was improper).

any additional awards based on impairment to his right lower extremity. The Board will affirm the February 12 and September 17, 2008 decisions

CONCLUSION

The Board affirms the Office's determination that appellant is not entitled to any additional awards based on impairment to his right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the September 17 and February 12, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: July 23, 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