

FACTUAL HISTORY

This is the second appeal in this case.¹ By decision dated September 17, 2007, the Board set aside a July 24, 2006 Office decision and remanded the case for further development of the medical evidence. The facts and the law of the case set forth in the Board's prior decision are incorporated herein by reference.

On October 4, 2007 Dr. Ronald Blum, an Office medical adviser, noted that Table 17-31 at page 544 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides* 5th ed.) provided impairment values for cartilage interval loss due to arthritis. He indicated that Table 17-31 includes impairment values for the knee joint and the patellofemoral joint. Dr. Blum asserted that both joint regions are part of the entire knee joint and do not function separately. He opined that, when there is cartilage interval loss in both the knee joint and patellofemoral joint, only the more severe loss should be used to determine impairment.

By decision dated October 23, 2007, the Office denied appellant's claim for an additional schedule award on the grounds the evidence did not establish that he had more than 12 percent right lower extremity impairment.

In a December 15, 2007 report, Dr. Richard S. Westbrook, appellant's attending Board-certified orthopedic surgeon, noted that Table 17-31 at page 544 of the A.M.A., *Guides* provides for impairment for loss of knee joint cartilage interval and also for patellofemoral joint cartilage loss. He stated that the A.M.A., *Guides* did not preclude impairment based on Table 17-31 for both patellofemoral joint cartilage loss and knee joint cartilage loss because they are considered two separate areas of the knee joint.

By decision dated December 23, 2008, the Office denied modification of the October 23, 2007 decision.²

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 See Docket No. 07-535 (issued September 17, 2007). In 1996 appellant sustained chondromalacia patella and a dislocation of the right knee in the performance of duty. He underwent a right knee partial meniscectomy. On January 14, 1998 appellant received a schedule award for 10 percent right lower extremity impairment. On February 26, 2001 the Office accepted a right knee dislocation and a torn medial meniscus of the left knee. On April 18, 2002 appellant underwent a left partial medial meniscectomy and partial synovectomy. On February 20, 2003 he was awarded an additional two percent impairment of the right lower extremity. On May 28, 2005 appellant received a schedule award for 12 percent left lower extremity impairment. On May 22, 2008 he underwent a left knee partial medial meniscectomy.

² Subsequent to the December 23, 2008 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

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 Office as the appropriate standard for evaluating schedule losses.⁵

ANALYSIS

The Board finds that this case is not in posture for a decision. Dr. Blum did not properly base his opinion of appellant's right lower extremity impairment on the fifth edition of the A.M.A., *Guides*. He asserted that finding impairment for cartilage interval loss for both the knee joint and the patellofemoral joint constitutes a duplication of impairment. However, Dr. Blum provided no support for his assertion. He did not reference any section of the A.M.A., *Guides* as precluding an impairment rating that includes both knee joint cartilage interval loss and patellofemoral joint cartilage loss. Dr. Blum did not reference any section of the A.M.A., *Guides* supporting his assertion that, when there is cartilage interval loss in the knee joint and patellofemoral joint, only the more severe loss should be used to determine impairment. The Board notes that Table 17-31 at page 544 of the fifth edition of the A.M.A., *Guides* allows separate ratings for loss of patellofemoral cartilage interval and knee cartilage interval.

On appeal, appellant argues that Dr. Blum did not provide support for his assertion that an impairment rating cannot include both loss of patellofemoral joint cartilage level and knee joint cartilage interval. He asserts that his impairment rating should include both 10 percent lower extremity impairment for 2 millimeters (mm) patellofemoral cartilage interval and 7 percent for 3 mm knee joint cartilage level as stated in the October 15, 2001 impairment rating of Dr. Westbrook. Appellant argues that he is entitled to the 24 percent impairment rating in Dr. Westbrook's October 15, 2007 report, which included impairment for cartilage interval loss due to arthritis, impairment for a partial meniscectomy and impairment for loss of range of motion. However, the cross-usage chart at page 526 of the A.M.A., *Guides* precludes the combination of impairment for arthritis with impairment for loss of range of motion. The cross-usage chart does permit the combination of impairment for arthritis and for diagnosis-based estimate impairment (such as a partial meniscectomy).

The Board finds that this case is not in posture for a decision. The case will be remanded to the Office for further development of the medical opinion evidence on the issue of appellant's right lower extremity impairment. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required.

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 23, 2008 is set aside and the case is remanded for further action consistent with this decision.

Issued: October 23, 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