



## **FACTUAL HISTORY**

On January 29, 2008 appellant, then a 47-year-old supervisory correctional officer, sustained an employment-related internal derangement of the right medial meniscus when he slipped on a puddle of water.<sup>1</sup> He did not stop work until June 24, 2008 when Dr. Jean Simard, a Board-certified orthopedic surgeon, performed right knee arthroscopy, partial medial meniscectomy, chondroplasty and lateral release. Appellant returned to sedentary duty on September 2, 2008. In reports dated December 5, 2008, Dr. Simard noted examination findings of full range of motion, no swelling and mild quadriceps atrophy. He advised that appellant could return to full duty without restrictions.

On December 9, 2008 appellant filed a schedule award claim and submitted a December 5, 2008 report in which Dr. Simard advised that appellant reached maximum medical improvement that day. Dr. Simard provided knee range of motion findings and advised that, under Table 17-6 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> appellant was entitled to a five percent impairment for right thigh atrophy and, under Table 17-33 a two percent impairment for a partial medial meniscectomy, to total a seven percent right lower extremity impairment. Appellant returned to full duty on December 8, 2008. By report dated January 22, 2009, an Office medical adviser reviewed Dr. Simard's report and advised that, in accordance with Table 17-33, appellant was entitled to a two percent right lower extremity impairment. The medical adviser noted that Table 17-2 of the A.M.A., *Guides* precludes the use of a pain impairment with a diagnosis-based estimate found in Table 17-33.

By decision dated February 6, 2009, the Office found that, based on the opinion of the Office medical adviser, appellant was entitled to a two percent permanent impairment of the right lower extremity but that, as he had already received seven percent impairment of the right lower extremity, he was not entitled to an additional award.

## **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees' Compensation Act<sup>3</sup> and section 10.404 of the implementing federal regulations,<sup>4</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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

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<sup>1</sup> The record indicates that on July 31, 2002 appellant was granted a schedule award for a three percent impairment of the left lower extremity and on February 3, 2006 was granted a schedule award for a five percent impairment of the right lower extremity. The schedule award decision noted that he had previously received a two percent impairment of the right lower extremity. That decision is not found in the record.

<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

A.M.A., *Guides*<sup>5</sup> has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>6</sup>

Before the A.M.A., *Guides*, can be utilized, a description of impairment must be obtained from the claimant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>7</sup>

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not established that he is entitled to a schedule award greater than the seven percent previously awarded. By report dated December 5, 2008, Dr. Simard, an attending orthopedic surgeon who performed partial meniscectomy on appellant's right knee on July 24, 2008, stated that he reached maximum medical improvement that day. He advised that on examination appellant had mild quadriceps atrophy which under Table 17-6 of the A.M.A., *Guides*, would entitle him to a five percent impairment and that under Table 17-33, he was entitled to a two percent impairment for a partial medial meniscectomy, for a total seven percent impairment of the right lower extremity. Table 17-6 of the A.M.A., *Guides* provides that mild thigh atrophy can yield a three to eight percent impairment,<sup>9</sup> but Table 17-2 provides that an impairment for atrophy cannot be combined with an impairment for a diagnosis-based meniscectomy.<sup>10</sup> Based on Dr. Simard's examination findings, appellant would therefore be entitled to a five percent impairment rating.

In a January 22, 2009 report, an Office medical adviser noted his review of Dr. Simard's report and advised that Table 17-2 precluded combining impairment ratings for a diagnosis-based estimate and for pain. He concluded that appellant was entitled to a two percent right lower extremity impairment. Dr. Simard, however, did not provide an impairment rating for pain but stated that, under Table 17-6, appellant was entitled to a five percent impairment for thigh

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<sup>5</sup> A.M.A., *Guides*, *supra* note 2.

<sup>6</sup> See *Joseph Lawrence, Jr.*, *supra* note 2.

<sup>7</sup> *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); see *J.P.*, 60 ECAB \_\_\_\_ (Docket No. 08-832, issued November 13, 2008).

<sup>9</sup> *Id.* at 530.

<sup>10</sup> A.M.A., *Guides*, *supra* note 2 at 526.

atrophy. The A.M.A., *Guides* provides for three separate methods for calculating the lower extremity impairment: anatomic; functional and diagnosis based. When uncertain about which method to use, the evaluator should calculate the impairment using different alternatives and choose the method or combination of methods that gives the most clinically accurate impairment rating. If more than one method can be used, the method that provides the higher impairment rating should be adopted.<sup>11</sup> Thus, as Dr. Simard found a five percent impairment due to thigh atrophy, a finding greater than the two percent diagnosis-based estimate for a partial meniscectomy, appellant established that he was entitled to a schedule award for a five percent impairment rating of the right lower extremity.

With his appeal to the Board, appellant acknowledged that he had previously been granted schedule awards totaling seven percent for a right lower extremity impairment. While he argued on appeal that the previous award was for a different injury, section 8107 of the Act provides that schedule awards are payable for permanent impairment of specified body members, functions or organs, not for specific injuries<sup>12</sup> and section 8108(1) provides that the period of compensation payable under section 8107 is reduced by the period compensation paid or payable under the schedule for an earlier injury if compensation in both cases is for disability of the same member,<sup>13</sup> which in this case is the right lower extremity. Appellant therefore has not established that he is entitled to a schedule award for a right lower extremity impairment greater than the seven percent previously awarded.

### **CONCLUSION**

The Board finds that appellant is not entitled to a schedule award for his right lower extremity greater than the seven percent previously awarded.

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<sup>11</sup> *Id.* at 527, 555; *see J.C.*, 60 ECAB \_\_\_\_ (Docket No. 08-1833, issued March 23, 2009).

<sup>12</sup> 5 U.S.C. § 8107.

<sup>13</sup> *Id.* at § 8108(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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