

impairment of the left lower extremity due to combined impairments from strain and tendinitis, bilateral partial meniscal tears, primary knee joint arthritis and patellar fissure.

On October 9, 2009 an Office medical adviser noted that a functional capacity evaluation was not consistent with a 29 percent impairment rating. Further, he noted that appellant could receive a diagnosis-based rating based on bilateral partial meniscectomy or primary osteoarthritis or patellofemoral arthritis or tendinitis, but all these diagnoses could not be used. As judgment was required to determine which diagnosis was most clinically accurate and impairing, the medical adviser suggested a referral medical evaluation.

On December 30, 2009 Dr. Alexander Doman, an orthopedic surgeon and second opinion physician, examined appellant and diagnosed status post arthroscopic partial medial meniscectomy, left knee. He determined that appellant had a two percent impairment of the left lower extremity based on partial medial meniscectomy. The Office medical adviser found that Dr. Doman correctly evaluated the impairment.

On January 26, 2010 the Office issued a schedule award for a two percent impairment of the left lower extremity. It based its decision on the impairment evaluation given by Dr. Doman.

On appeal, appellant's representative argued: "The basis for the referral to a second opinion was the legal opinion from the [district medical adviser] that the report from Dr. Heyman could not be utilized as Dr. Heyman did not perform a physical examination upon appellant." He asserts that the Office medical adviser did not explain any other deficiency with Dr. Heyman's report. Appellant's representative asks the Board to modify the Office's decision to reflect the rating given by Dr. Heyman.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.²

ANALYSIS

The basis for the Office's referral to the second opinion physician was not that Dr. Heyman, appellant's evaluating orthopedic surgeon, did not physically examine appellant. It was because the methodology of the sixth edition of the A.M.A. *Guides* requires the selection of

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

a single regional diagnosis for rating purposes.³ Dr. Heyman based his overall rating by combining four knee diagnoses. The Office medical adviser explained that appellant could receive a diagnosis-based rating for bilateral partial meniscectomy or primary osteoarthritis or patellofemoral arthritis or tendinitis, but not based on all four diagnoses combined. The referral to Dr. Doman, an orthopedic surgeon, was for the purpose of examining appellant to determine which knee diagnosis was most clinically accurate and impairing for rating purposes.

Dr. Doman based appellant's impairment on the diagnosis of partial medial meniscectomy, but he did not explain why he chose this diagnosis over the other diagnoses used by Dr. Heyman or identified by the Office medical adviser. He appeared to clarify that appellant did not have bilateral meniscectomies, but apart from acknowledging the accepted conditions in the statement of accepted facts, he made no further mention of the various knee diagnoses at issue.

The Board will set aside the Office's January 26, 2010 decision and remand the case for a supplemental report from Dr. Doman to address the various accepted conditions and diagnoses and to exercise his judgment in selecting the most appropriate diagnosis for rating purposes. After such further development of the medical evidence as may become necessary, the Office shall issue an appropriate final decision on appellant's schedule award claim.

CONCLUSION

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

³ A.M.A., *Guides* 497, 499, Example 16-9 at 526, 529 (6th ed. 2008). At 16.2 the A.M.A., *Guides* provide that when there are separate diagnoses in each limb, the examiners should use the diagnosis with the highest impairment rating. If an examiner routinely uses multiple diagnoses without objective, supporting data, the validity and reliability of the evaluation may be questioned.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: November 18, 2010
Washington, DC

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

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

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