

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

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**D.J., Appellant** )

**and** )

**DEPARTMENT OF VETERANS AFFAIRS,** )  
**VETERANS ADMINISTRATION MEDICAL** )  
**CENTER, Baltimore, MD, Employer** )

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**Docket No. 10-272**  
**Issued: September 3, 2010**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 9, 2009 appellant, through his attorney, filed a timely appeal from the July 30, 2009 merit decision of the Office of Workers' Compensation Programs, which denied his schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether appellant's April 27, 2004 employment injury caused medial and lateral meniscal tears in his right knee, entitling him to a schedule award for permanent impairment.

**FACTUAL HISTORY**

On April 27, 2004 appellant, then a 47-year-old patient services assistant, sustained an injury in the performance of duty when he struck his right knee on an open file cabinet drawer. Examination at the employer's health unit revealed no abnormal findings. An x-ray showed a

small effusion consistent with bruising anterior to the patella. No fracture was seen. A repeat x-ray on May 6, 2004 showed a normal study “with no evidence of recent traumatic pathology noted.” Joint spacing and soft tissues were normal.

Appellant complained of increasing right knee symptoms since May 10, 2004. He stated there was increase instability or laxity while walking on May 12, 2004. Medications were not alleviating his pain. Appellant began to use a cane for ambulation. Physical examination on May 14, 2004 revealed moderate tenderness along the lateral line of the patella. There was increased tenderness with flexion and extension of the knee joint with no effusion. The Apley’s distraction test was positive. Appellant received a diagnosis of right knee sprain/strain “which appears to be worsening.”

Appellant returned to full duty on June 6, 2004. On June 14, 2004 the Office accepted his claim for sprain and strain of unspecified site of right knee, resolved.

On November 29, 2006 appellant filed a claim for a schedule award. The employer controverted the claim and noted that appellant was submitting medical documentation relating to a 1988 injury that occurred before his federal employment.

On September 6, 2006 Dr. Robert W. Macht, a general surgeon, noted that appellant injured his back and right leg on November 14, 1988 when a 4 x 4 fell and struck him. He noted that appellant’s knee gave way in February 1999. Magnetic resonance imaging (MRI) scans of his knee were obtained in August 2000 and March 2001. Dr. Macht made no mention of appellant’s striking his right knee on a file cabinet drawer on April 27, 2004. Appellant complained of severe constant pain about the right knee, which “is weak, swells, cracks, gives way and pops” and aches in damp weather. He stopped running, jumping, sports, dancing, using ladders, kneeling and squatting. Appellant could not walk or stand as much as before. He had difficulty using stairs. X-rays showed hypertrophic changes about the tibial tubercles. Dr. Macht reported that appellant had a 75 percent permanent impairment of his right leg as a result of the November 1988 accident injuring his right leg and knee.

The Office denied appellant’s schedule award claim on August 10, 2007.

Thereafter the Office received an August 2, 2007 report from Dr. Macht, who noted that appellant struck his right knee against a metal partition on April 27, 2004 causing injury. Appellant currently complained of severe constant right knee pain. His knee “is weak, swells, gives way and pops” and aches in damp and cold weather. Appellant stopped jumping, kneeling, squatting, running, driving, using ladders, dancing and sports. He had problems with prolonged walking and standing and difficulty using stairs. “There was a history of prior injury to his right knee and prior surgery,” Dr. Macht reported. An MRI scan in November 2006 showed a torn lateral and medial meniscus. Dr. Macht found it medically probable that appellant tore both on April 27, 2004 and determined that appellant had a 10 percent permanent impairment of his right lower extremity as a result of the April 27, 2004 employment injury. He explained that the remainder of appellant’s 75 percent impairment preexist the April 27, 2004 injury.

On May 16, 2008 the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. It found that Dr. Macht based his opinion on an inaccurate

history of the April 27, 2004 injury, which it accepted for a resolved sprain and strain. The Office noted that Dr. Macht addressed previous nonwork issues and offered no explanation of the impact of the April 27, 2004 employment injury on appellant's preexisting conditions. Dr. Macht offered no rationale as to how the April 27, 2004 employment injury resulted in dual meniscal tears.

On July 30, 2009 the Office again reviewed the merits of appellant's claim and denied modification of its prior decision. It noted that appellant had submitted no additional medical reports discussing an impairment rating of the right lower extremity or how his present right knee condition was related to the April 27, 2004 work injury.

On appeal appellant's representative argues that it is appropriate for an impairment rating to include preexisting conditions. "While it is clear that appellant had significant preexisting impairment, if he has any impairment due to the 2004 injury that must be rated." He asks the Board to remand the case for a proper impairment evaluation by an Office referral physician.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>2</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>3</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>4</sup> Medical conclusions unsupported by rationale are of little probative value.<sup>5</sup>

Section 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>6</sup> A claimant seeking a schedule award under section 8107 has the burden to establish that he sustained a permanent impairment

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

<sup>5</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

<sup>6</sup> 5 U.S.C. § 8107(a).

of a scheduled member or function of the body as a result of an injury sustained while in the performance of duty.<sup>7</sup>

### ANALYSIS

The Office accepts that on April 27, 2004 appellant struck his right knee on an open file cabinet drawer while in the performance of his federal duties. It also accepts that this incident caused a sprain and strain of an unspecified site of the right knee, an injury that resolved by June 14, 2004. Appellant claims something more. He claims that the April 27, 2004 incident has caused permanent impairment to his right lower extremity. Appellant, therefore, bears the burden of proof to establish that the April 27, 2004 incident caused a medical condition that permanently impaired his right lower extremity.

Appellant submitted the August 2, 2008 report from Dr. Macht, his surgeon, who noted that appellant struck his right knee against a metal partition on April 27, 2004.<sup>8</sup> Dr. Macht noted that a November 2006 MRI scan showed a torn medial and lateral meniscus and he concluded that it was medically probable that the April 27, 2004 incident caused both tears. He offered no medical rationale. Appellant failed to offer an explanation from a physiological perspective how striking one's knee against a file cabinet drawer can tear a meniscus. Dr. Macht must explain how it is medically reasonable to expect meniscal tears from the mechanism of injury described.

Dr. Macht must also explain how he was able to determine that the meniscal tears shown on the November 2006 MRI scan arose from the April 27, 2004 work incident. However, appellant has a history that is significant for previous knee injury and surgery, Dr. Macht must offer sound medical reasoning to rule out preexisting tears. He must also explain how these tears did not arise after the April 27, 2004 incident.

Dr. Macht presented little or no medical rationale to support his opinion on the causal relationship between the April 27, 2004 work incident and the meniscal tears shown on the November 2006 MRI scan, the Board finds that his opinion carries little probative weight to support appellant's claim for a schedule award.<sup>9</sup> Appellant has not met his burden of proof to establish the element of causal relationship that is necessary to proceed with his schedule award claim. The Board will therefore affirm the Office's June 30, 2009 decision denying that claim.

Appellant's representative correctly argues on appeal that in determining entitlement to a schedule award, preexisting impairments to the scheduled member are to be included.<sup>10</sup> If there

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<sup>7</sup> See, e.g., *Ernest P. Govednik*, 27 ECAB 77 (1975) (no medical evidence that the employment injury caused the claimant to have a permanent loss of use of a leg or any other member of the body specified in the schedule).

<sup>8</sup> To be accurate, he struck his knee against an open file cabinet drawer, but the basic mechanism of injury is consistent with the facts.

<sup>9</sup> Incidentally, the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001), Table 17-33, page 546, assigns a 10 percent impairment of the lower extremity for partial medial and lateral *meniscectomy*, not for medial and lateral meniscal tears *per se*.

<sup>10</sup> *Michael C. Milner*, 53 ECAB 446, 450 (2002); *Raymond E. Gwynn*, 35 ECAB 247 (1983). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7.a(2) (January 2010) for two exceptions.

is any impairment due to the 2004 injury, preexisting conditions must be considered in the rating.” That is the question, whether appellant has any impairment “due to the 2004 injury.” He has not met his burden of proof on that issue.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that his April 27, 2004 employment injury caused medial and lateral meniscal tears in his right knee. The Office, therefore, properly denied his schedule award claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 30, 2009 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: September 3, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

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