

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALEJANDRO ALVARADO, JR. and DEPARTMENT OF THE ARMY,
CORPUS CHRISTI ARMY DEPOT, Corpus Christi, Tex.

*Docket No. 96-795; Submitted on the Record;
Issued March 11, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has greater than a 24 percent permanent loss of use of the right leg.

The Office of Workers' Compensation Programs accepted that appellant's May 23, 1991 employment injury resulted in a torn medial meniscus of the right knee and paid for surgeries on the right knee performed on July 31, 1991 and July 27, 1994. On January 13, 1992 the Office issued appellant a schedule award for a 24 percent permanent loss of use of the right leg.

The January 13, 1992 schedule award was based on an Office medical adviser's assignment, using the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) to findings reported by appellant's attending and operating physician, Dr. Charles S. Clark, Jr., a Board-certified orthopedic surgeon. In a report dated December 10, 1991, this Office medical adviser assigned 9 percent for loss of flexion, 12 percent for Grade III chondromalacia, and 5 percent for a partially torn medial meniscus.

After his second surgery on July 27, 1994, appellant filed a claim for an increased schedule award. In a report dated October 11, 1994, Dr. Clark stated that appellant had a full range of knee motion and no demonstrable instability. Dr. Clark stated that a recent episode of pain and swelling had resolved, but that appellant could expect such intermittent acute flare-ups. By letter dated October 26, 1994, the Office requested that Dr. Clark evaluate appellant's permanent impairment of the right leg using the fourth edition of the A.M.A., *Guides*. The Office attached the sections of the A.M.A., *Guides* pertaining to impairments of the leg. In a report dated November 15, 1994, Dr. Clark stated:

“[Appellant] has had documented complete Grade IV total loss of articular cartilage of the anterior aspect of the distal femur in the patellar groove. He still has a degree of articular cartilage left on the undersurface of the patella, and thus,

he has approximately a 1 [millimeter] cartilage interval which interprets as a 10 percent impairment of the body and 25 percent of the knee.”

On June 28, 1995 an Office medical adviser reviewed the medical evidence and stated:

“It is not clear whether the rating [of Dr. Clark] is based on the cartilage interval of the patellofemoral joint, or that of the knee joint. The fourth edition A.M.A., *Guides* requires that such determinations be done by x-rays of the involved joint with measurement of the cartilage interval (page 83 -- Table 62). Please write Dr. Clark and ask him to get x-ray views of the involved joints of the knee to include the measurements of the cartilage interval, and to render an impairment rating according to the fourth edition A.M.A., *Guides*.”

In response to the Office’s transmittal of the Office medical adviser’s June 28, 1995 report, Dr. Clark stated:

“[Appellant] comes to the office today for x-rays of his knee. Standing AP [anterior-posterior] reveals some flattening of the medial femoral condyle, subchondral sclerosis but no significant joint space narrowing. Again, I reiterate that his impairment and articular cartilage damage involve the trochlea groove and distal femur anteriorly involving the patellofemoral articulation. I have documented photographic evidence of this large area of complete articular cartilage loss and xerox copy of these are enclosed.... This is definite documented hands on evidence of complete articular cartilage loss and damage and it is the justification for my determination of 25 percent permanent physical impairment of the right lower extremity....”

On October 13, 1995 the Office referred appellant to Dr. Frank Luckay, a Board-certified orthopedic surgeon, for an evaluation of the permanent loss of use of the right leg using the A.M.A., *Guides*. In a report dated October 27, 1995, Dr. Luckay diagnosed chondromalacia, and stated that x-rays taken that day showed no evidence of joint space narrowing. Dr. Luckay concluded:

“I realize there is complete loss of cartilage on the femoral side of the patellar femoral articulation, but according to the x-rays today there is no loss of cartilage interval; and in this situation, the maximum amount allowed by the 4th edition A.M.A., *Guides* is two percent whole person.”

By decision dated December 12, 1995, the Office found that appellant had no greater than a 24 percent permanent loss of use of his right leg.

The Board finds that appellant has no greater than a 24 percent permanent loss of use of the right leg.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³ Effective November 1, 1993, the Office began using the fourth edition of the A.M.A., *Guides* and determined:

“A claimant who has received a schedule award calculated under a previous edition may later make a claim for an increased award, which should be calculated according to the fourth edition.”⁴

The fourth edition of the A.M.A., *Guides*, unlike previous editions, rates impairments of leg joints due to arthritis by measurement of “roentgenographically determined cartilage intervals,” as set forth in Table 62 of Chapter 3. In a report dated October 27, 1995, Dr. Luckay, the Board-certified orthopedic surgeon to whom the Office referred appellant, concluded that x-rays taken that day showed no decrease in the cartilage interval of the knee joint or of the patellofemoral articulation. In his November 15, 1994 report, appellant’s attending Board-certified orthopedic surgeon, Dr. Clark, noted a one millimeter cartilage interval, but did not indicate whether this decreased cartilage interval was of the knee joint or the patellofemoral articulation. In his July 31, 1995 report, Dr. Clark clarified that this decreased interval involved the patellofemoral articulation. As Table 62 of Chapter 3 of the fourth edition of the A.M.A., *Guides* provides that a one millimeter cartilage interval at the patellofemoral articulation constitutes a 15 percent impairment of the leg, Dr. Clark’s reports subsequent to the July 27, 1994 surgery do not show greater than a 24 percent permanent loss of use of appellant’s right leg. There is no medical evidence showing that appellant has greater than a 24 percent permanent loss of use of his right leg.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

⁴ FECA Bulletin 94-4 (issued November 1, 1993).

The decision of the Office of Workers' Compensation Programs dated December 12, 1995 is affirmed.

Dated, Washington, D.C.
March 11, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member