

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKLIN G. DEL ROSARIO and DEPARTMENT OF THE NAVY,
SEA SYSTEMS COMMAND, MARE ISLAND NAVAL SHIPYARD, Vallejo, CA

*Docket No. 98-680; Submitted on the Record;
Issued August 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has more than a five percent permanent impairment of the right lower extremity for which he received a schedule award.

The Board has duly reviewed the case record and concludes that appellant has no greater than a five percent permanent impairment of the right lower extremity.

On December 22, 1994 appellant, then a 55-year-old paint worker, filed an occupational disease claim, alleging that employment factors caused right ankle and knee pain. The Office of Workers' Compensation Programs accepted that he sustained employment-related right knee sprain and medial meniscus tear, and on May 13, 1997, he filed a claim for a schedule award.¹ By decision dated November 21, 1997, the Office granted appellant a schedule award for a five percent permanent impairment for loss of use of the right lower extremity for the period November 1, 1995 to February 9, 1996 for a total of 14.40 weeks of compensation.

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations 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

¹ The procedural history also indicates that on May 12, 1988 appellant sustained an employment-related bilateral knee sprain and left ankle sprain. By decision dated March 22, 1996, the Office determined that appellant's modified painting position fairly and reasonably represented his wage-earning capacity. Following appellant's request, a hearing was held on December 2, 1996. In an April 14, 1997 decision, an Office hearing representative reversed the March 22, 1996 decision.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ (hereinafter A.M.A., *Guides*) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵

The relevant medical evidence includes an October 3, 1994 magnetic resonance imaging (MRI) scan of the right knee that revealed thickening of the anterior cruciate ligament without evidence of a tear and increased intermediate intrasubstance signal in posterior horns of medial and lateral menisci without definite extension to the articular surface, both equivocal for tiny tears. In a September 11, 1995 report, Dr. J.C. Pickett, a Board-certified orthopedic surgeon who provided a second opinion for the Office, reviewed the October 3, 1994 MRI scan and opined that it revealed a Grade III tear of the medial meniscus. Examination showed tenderness along the medial joint line of the right knee with a click on external rotation. In an undated report that was received by the Office on May 24, 1996, appellant's treating general practitioner, Dr. Joseph Pramuk, determined that appellant had reached maximum medical improvement in November 1995. He indicated that appellant suffered moderate pain and discomfort. Range of motion was normal. There was no measurable atrophy or weakness and there was no varus or valgus deformity. Dr. Pramuk noted the MRI scan findings of deterioration of the meniscal cartilage were consistent with traumatic change. By report dated July 7, 1997, an Office medical adviser utilized Dr. Pramuk's findings and advised that, under Table 62 of the A.M.A., *Guides*,⁶ appellant had a five percent impairment.

The Board finds that it was proper for the Office medical adviser to use Dr. Pramuk's findings to rate appellant's permanent impairment as the adviser's report indicates that he properly followed the footnote found with Table 62 that indicates that patellofemoral pain and crepitation of physical examination without joint space narrowing equals a five percent lower extremity impairment.⁷ The Office therefore properly granted appellant a schedule award for a five percent permanent impairment of the right lower extremity.⁸

⁴ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

⁵ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ A.M.A., *Guides*, *supra* note 4 at 83.

⁷ *Id.*

⁸ See *Luis Chapa, Jr.*, 41 ECAB 159 (1989).

The decision of the Office of Workers' Compensation Programs dated November 21, 1997 is hereby affirmed.

Dated, Washington, D.C.
August 16, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member