

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILIP N. NEUNER and DEPARTMENT OF JUSTICE,
FEDERAL CORRECTIONAL INSTITUTE, Phoenix, AZ

*Docket No. 98-1092; Submitted on the Record;
Issued February 4, 2000*

DECISION and ORDER

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

The issue is whether appellant sustained greater than a 14 percent permanent impairment of the left lower extremity for which he received a schedule award.

On May 21, 1996 appellant, then a 45-year-old communication technician, sustained a torn medial meniscus of the left knee in the performance of duty.

On August 7, 1996 appellant underwent left knee arthroscopy, arthroscopic partial medial meniscectomy, arthroscopic abrasion chondroplasty of the medial femoral condyle, lateral tibial plateau and trochlea.

In clinical notes dated December 9, 1996, Dr. Gerald Yacobucci, a Board-certified surgeon, related that appellant had reached a stationary level in his recovery and, in his opinion, had sustained a 15 percent permanent impairment of the left low extremity due to his employment injury.

On February 8, 1997 appellant filed a claim for a schedule award.

By letter dated March 13, 1997, the Office of Workers' Compensation Programs referred appellant to Dr. Irwin Shapiro, a Board-certified orthopedic surgeon, for an examination and evaluation as to the extent of any permanent impairment causally related to appellant's employment-related left knee injury.

In a narrative report dated March 28, 1997, Dr. Shapiro provided detailed findings on examination and stated:

“After review of [appellant's] history, physical examination and available medical records, it is my opinion that his condition is stationary. He has sustained approximately a 15 percent permanent impairment of the left low extremity as a result of the industrial incident in question. This is based upon partial medial meniscectomy as well as the arthritic changes evidenced in the medial femoral condyle, lateral tibial plateau and patellofemoral joints, as well as his pain.”

In a memorandum dated May 4, 1997, Dr. Leonard A. Simpson, the Office's district medical Director, indicated that he had reviewed the medical evidence of record, including Dr. Shapiro's report, and he stated:

"The subjective complaints, *i.e.*, pain that may interfere with activity would be graded a maximal Grade III as per the Grading Scheme found in [C]hapter 3, fourth edition of the [American Medical Association], *Guides [to the Evaluation of Permanent Impairment]*, hereinafter, the A.M.A., *Guides*] or a 60 percent grade of a maximal 7 percent (femoral nerve), equivalent to a 4.2 rounded for to 4 percent impairment. Range of motion of the left knee was 5/20 through 120/130, and for this lack of extension, according to Table 41, Chapter 3, this would be a mild or 10 percent lower extremity impairment... Utilizing the Combined Values Chart, the 4 percent for pain factors, combined with the 10 percent for limited motion, combined with the 0 percent for atrophy or weakness, would be equivalent to a 14 percent impairment of the left lower extremity or leg.

"A second method of calculating an award would be based on the partial medial meniscectomy, which according to Table 64 would be equivalent to a 2 percent impairment. In addition, there was two+ crepitation of the left knee, and according to the footnote of Table 62, this would be equivalent to an additional 5 percent impairment, noting the operative findings of the chondromalacia. Utilizing the Combined Values Chart, the two combined with the five would be equivalent to a seven percent impairment, which is lower than the first method.

"The first method should be adopted, which arrives at a higher award of a 14 percent impairment of the left lower extremity or leg...."

By decision dated June 3, 1997, the Office granted appellant a schedule award based upon a 14 percent permanent impairment of the lower extremity.

By letter dated June 15, 1997, appellant requested a hearing before an Office hearing representative.

On November 24, 1997 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated February 2, 1998, the Office hearing representative affirmed the Office's June 3, 1997 decision.

Section 8107 of the Federal Employee' Compensation Act 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.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

¹ 5 U.S.C. § 8107(a).

justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.²

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, 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 description of the impairment."³ 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 restrictions and limitations.⁴

In this case, appellant's attending physician, Dr. Yacobucci, did not provide physical findings on examination which could be used to determine the degree of appellant's permanent impairment. Therefore, the Office referred appellant to Dr. Shapiro for an evaluation of appellant's permanent impairment.

In a narrative report dated March 28, 1997, Dr. Shapiro provided detailed findings on examination and stated:

"[Appellant] has sustained approximately a 15 percent permanent impairment of the left low extremity as a result of the industrial incident in question. This is based upon partial medial meniscectomy as well as the arthritic changes evidenced in the medial femoral condyle, lateral tibial plateau and patellofemoral joints, as well as his pain."

In a memorandum dated May 4, 1997, Dr. Simpson, the Office's district medical director, indicated that he had reviewed the medical evidence of record, including Dr. Shapiro's report, and he stated:

"The subjective complaints, *i.e.*, pain that may interfere with activity would be graded a maximal Grade III as per the Grading Scheme found in [C]hapter 3, fourth edition of the [A.M.A., *Guides*] or a 60 percent grade of a maximal 7 percent (femoral nerve), equivalent to a 4.2 rounded off to 4 percent impairment. Range of motion of the left knee was 5/20 through 120/130, and for this lack of extension, according to Table 41, Chapter 3, this would be a mild or 10 percent lower extremity impairment.... Utilizing the Combined Values Chart, the 4 percent for pain factors, combined with the 10 percent for limited motion, combined with the 0 percent for atrophy or weakness, would be equivalent to a 14 percent impairment of the left lower extremity or leg."

² *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995); *see John H. Smith*, 41 ECAB 444, 448 (1990).

⁴ *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

“A second method of calculating an award would be based on the partial medial meniscectomy, which according to Table 64 would be equivalent to a 2 percent impairment. In addition, there was two+ crepitation of the left knee, and according to the footnote of Table 62, this would be equivalent to an additional 5 percent impairment, noting the operative findings of the chondromalacia. Utilizing the Combined Values Chart, the two combined with the five would be equivalent to a seven percent impairment, which is lower than the first method.

“The first method should be adopted, which arrives at a higher award of a 14 percent impairment of the left lower extremity or leg....”

As the report of Dr. Simpson, based upon the physical findings of Dr. Shapiro, provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.⁵

The opinions of Dr. Yacobucci and Dr. Shapiro that appellant had a 15 percent permanent impairment are of limited probative value in that they failed to provide an explanation of how the assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.⁶ However, Dr. Shapiro did provide specific findings on examination with his report such that Dr. Simpson was able to determine the percentage of permanent impairment in accordance with the A.M.A., *Guides*.

The February 2, 1998 and June 3, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
February 4, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁶ See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).