

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM C. PYRON and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Houston, TX

*Docket No. 98-1625; Submitted on the Record;
Issued February 18, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has met his burden of proof to establish that he has more than a 20 percent permanent impairment of his left lower extremity, for which he has received a schedule award.

On April 20, 1994 appellant, then a 29-year-old electronics technician, filed a claim for compensation alleging that on April 19, 1994 he injured his right knee while in the performance of duty.

On July 26, 1994 the Office of Workers' Compensation Programs notified appellant that it had accepted his right knee contusion and torn right medial meniscus.

In a medical report dated November 16, 1994, Dr. Merrimon W. Baker, appellant's treating physician Board-certified in orthopedic surgery, stated that appellant "has developed some pain in his left knee, apparently because of his right leg, in particular his quadriceps. He has had to favor his left knee which has irritated his knee and has developed some popping and catching to this knee."

In a medical report dated January 25, 1995, Dr. Baker stated that appellant twisted his left knee as a result of his right knee injury and that he has had increased pain. He stated that appellant had left knee osteoarthritis and left knee degenerative medial meniscal tear.

In a medical report dated July 18, 1995, Dr. Baker stated that appellant "is continuing to have pain with catching, popping and swelling in his left knee."

On October 23, 1995 the Office stated in a statement of accepted facts that appellant's "accepted condition was upgraded to accept the left knee and left knee surgery was approved in October 1995."

On November 20, 1995 the Office placed appellant on the periodic rolls for medial meniscus tear right and left with bilateral surgical repair.

On July 30, 1996 the Office requested Dr. Baker to provide an assessment of appellant's permanent impairment "of a lower extremity (or subordinate anatomic component)." The Office required Dr. Baker to refer to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) in his assessment.

On April 24, 1997 the Office requested Dr. Baker to provide an assessment of appellant's permanent partial impairment of his left knee condition.¹

In a medical report dated June 5, 1997, Dr. Baker stated that appellant had reached maximum medical improvement on April 1, 1997 and that he had a 14 percent permanent impairment of the left knee. He included copies of the appropriate tables with annotations which he used to arrive at his determination. Dr. Baker noted that he relied on Table 62 which he referred to as "Arthritis Impairment, x-ray" and noted 0 millimeter cartilage interval which equaled a 20 percent permanent impairment of the left lower extremity and an 8 percent whole person impairment. He also noted that, appellant's range of motion from 0 to 95 degrees, based on Table 41, knee impairment, equaled a 15 percent permanent impairment of the left lower extremity and a 6 percent whole person impairment. Dr. Baker then relied on the Combined Values Chart and added 6 percent and 8 percent to arrive at a 14 percent whole person impairment rating. He did not specify a rating for appellant's left lower extremity.

In a medical report dated August 13, 1997, Dr. Henry B. Mobley, the district medical adviser Board-certified in internal medicine, stated that he had reviewed the October 23, 1995 statement of accepted facts and Dr. Baker's June 5, 1997 medical report and agreed with Dr. Baker's determination that appellant had a 20 percent permanent impairment of the left lower extremity based on appellant's patellofemoral-cartilage interval of 0 millimeters. However, Dr. Mobley discounted Dr. Baker's calculations for limited range of motion in addition to the arthritis "because this would be a duplication under F[ederal] E[m]ployees' C[ompensation] A[ct] Bulletin 95-17 [and] 96-17, 8b and the [A.M.A.,] *Guides*."

In a decision dated October 6, 1997, the Office issued a compensation award for a 20 percent schedule award based on the permanent impairment of his left lower extremity (leg).

The Board finds that appellant has no more than a 20 percent permanent impairment of the left lower extremity for which he has received a schedule award.

Under section 8107 of the 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

¹ On October 24, 1996 Dr. Baker stated that appellant had a nine percent permanent impairment of the right lower extremity which resulted in the Office's December 20, 1996 schedule award of a seven percent permanent impairment for the right lower extremity. That decision is not before the Board.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.304.

justice for all claimants the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴

In this case, the Office, in FECA Bulletin No. 95-17,⁵ stated that certain tables in Chapter 3 of the A.M.A., *Guides* are not to be used with other tables in that chapter because to do so would result in “overlapping applications, leading to percentages which greatly overstated the impairment.”⁶ Specifically, the Office noted that Table 62, arthritis impairments, based on reontgenographically determined cartilage intervals, is not to be used with Table 41, knee impairment. Since Dr. Baker relied on both Tables 62 and 47 in determining appellant’s schedule award, his determination had diminished probative value. However, Dr. Mobley properly applied the A.M.A., *Guides* by calculating appellant’s permanent partial impairment based on his arthritis (patellofemoral-cartilage interval of 0 millimeters as established by x-ray) to arrive at a 20 percent permanent impairment of the left lower extremity.⁷

The decision of the Office of Workers’ Compensation Programs dated October 6, 1997 is hereby affirmed.

Dated, Washington, D.C.
February 18, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁴ *James A. England*, 47 ECAB 115 (1995).

⁵ See FECA Bulletin No. 95-17 (issued March 23, 1995).

⁶ The Office, in FECA Bulletin No. 95-17, issued March 23, 1995, stated that certain tables in Chapter 3 of the A.M.A., *Guides* are not to be used with other tables in the chapter because to do so would result in “overlapping applications, leading to percentages which greatly overstated the impairment.” FECA Bulletin No. 96-17, issued September 20, 1996, which is the applicable bulletin in the instant case, references the tables listed in FECA Bulletin No. 95-17 without changes. Further the Office’s Procedure Manual has implemented FECA Bulletin No. 95-17. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exh. 4 at 4 (October 1995).

⁷ A.M.A., *Guides*, 83, Table 62.