U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY G. SUTHERLAND and DEPARTMENT OF THE NAVY, NAVAL AIR STATION, Jacksonville, FL

Docket No. 98-2378; Submitted on the Record;
Issued February 18, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant has established that he has more than a 10 percent permanent impairment of the lower left extremity for which he has received a schedule award.

On August 9, 1995 appellant, then a 59-year-old aircraft mechanic, filed a claim for compensation alleging that on July 17, 1995 he strained his left knee while in the performance of duty. Appellant did not stop work.

On October 16, 1995 the Office of Workers' Compensation Programs authorized arthroscopic surgery on appellant's left knee.

On October 20, 1995 Dr. John T. Hocker, appellant's treating physician and Board-certified in orthopedic surgery, stated in a postoperative report that he had performed arthroscopy of the left knee with partial anterior synovectomy, medial and laterally, a resection and balancing of torn medial meniscus and torn lateral meniscus, and a chondral abrasion and chondroplasty of the medial femoral condyle.

On April 30, 1996 Dr. Hocker reported the following:

> "Still having some general aching discomfort of the operated left knee, however, functionally he is doing very well as far as range of motion. Good stability. On discussing with him the findings and the operation again that he does have considerable erosion of the articular cartilage of the knee joint mainly medially. Discussed with him at great length that I think that it is much better to still have a functioning good knee with some discomfort but good function and maybe taking some anti-inflammatory to keep him going rather than doing a total knee as I do not think that he fits into the total knee category yet. Will try him on some Voltaren for a trial and see how he does. Depending on when he comes back in about two months probably x-ray his knee again."

On August 27, 1996 Dr. Hocker reported the following:

> "Doing very well with his exercises. States his knee is functioning fairly well. Discussed with him again the severity of his chondroplasty or erosion and there are different schools of thought on repeated arthroplasties vs. total knees and I think that he is too young to be having a total knee at this age that I do n[o]t think that it is bad enough. The patient also agrees with that concept."

On October 16, 1997 the Office requested that Dr. Hocker determine the extent of permanent partial impairment of appellant's left knee in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993).

In a medical report dated October 28, 1997, Dr. Hocker stated with respect to appellant's left knee that he had reached maximum medical improvement that day, that he had retained active flexion of 140 degrees with 150 degrees as average range of flexion-extension, and that he retained extension of 0 degrees with 0 degrees as neutral. He specifically noted:

> "[Appellant] did have considerable erosion of both the medial and lateral joint compartments along with the degeneration and resection and balancing of both medial and lateral menisci. One can see that the range of motion as listed plus the meniscectomy of the medical and lateral one plus the chondral abrasion and plasty of the medial and lateral compartments, the figure listed here of 20 percent [permanent partial impairment] of the left leg I would feel would be a very reasonable manner."

On November 13, 1997 Dr. Harry L. Collins, Board-certified in orthopedic surgery and an Office medical adviser, reviewed Dr. Hocker's evaluation and stated that Dr. Hocker had not established a basis for a 20 percent permanent impairment of appellant's left lower extremity. The Office medical adviser noted that the range of motion findings did not constitute an impairment rating in accordance with the A.M.A., *Guides*. However, the Office medical adviser stated that, based on Dr. Hocker's medical reports, appellant had had a partial medial and lateral meniscectomy performed on October 20, 1995 and that, based on Table 66 page 85 of the A.M.A., *Guides*, "they [the procedures] represent a 10 percent p[ermanent] i[mpairment] of the l[eft] l[ower] e[xtremity]." The Office medical adviser agreed with Dr. Hocker's determination that the date of appellant's maximum medical improvement was October 28, 1997.

By decision dated February 11, 1998, the Office granted appellant a schedule award for a 10 percent permanent disability of his left lower extremity.[1]

The Board finds that there is a conflict in the medical evidence between the impairment rating of Dr. Hocker and the Office medical adviser.

[1] By decision dated June 29, 1998, the Office denied appellant's June 19, 1998 application for review on the grounds that appellant failed to raise substantive legal questions or to submit any new evidence in support of his request.

Under section 8107 of the Federal Employees' Compensation Act[2] 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 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* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[4]

The Office medical adviser utilized Dr. Hocker's report,[5] noting that Dr. Hocker had performed a medial and lateral meniscectomy on appellant on October 20, 1995. The Office medical adviser then used the A.M.A., *Guides* (fourth edition) to calculate appellant's impairment based on Table 64 of the A.M.A., *Guides*, and determined that a partial medial and lateral meniscectomy represents a 10 percent permanent impairment of the lower extremity. He therefore recommended an impairment rating of 10 percent permanent impairment of the lower left extremity.

The Office medical adviser did not address Dr. Hocker's postoperative finding of "considerable erosion of the articular cartilage of the knee joint mainly medially" or the 20 percent permanent impairment rating aside from saying Dr. Hocker did not establish a basis for the rating.

Because both the Office medical adviser and Dr. Hocker utilized the A.M.A., *Guides*, and arrived at a significant variance in impairment rating, the Board finds that the Office should prepare a statement of accepted facts and refer the record and appellant for an impartial examination and rationalized medical opinion as to the degree of permanent impairment appellant sustained to his left lower extremity pursuant to section 8123(a) of the Act. Following such further development as deemed necessary, the Office should render a *de novo* decision.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.304.

[4] *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

[5] *See James E. Jenkins*, 39 ECAB 860 (1988). Further, Chapters 1 and 2 of the A.M.A., *Guides* note that they were prepared to allow one physician to use the raw clinical data of another physician to arrive at a uniform standardized evaluation.

The decisions of the Office of the Workers' Compensation Programs dated June 29 and February 11, 1998 are hereby set aside and the case remanded for further development consistent with these decisions of the Board.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member