

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRA L. BOWERS and TENNESSEE VALLEY AUTHORITY,
WATTS BAR NUCLEAR PLANT, Spring City, TN

*Docket No. 01-1281; Submitted on the Record;
Issued December 28, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a two percent impairment to his right lower extremity for which he received a schedule award.

On January 19, 1999 appellant, then a 55-year-old senior instrument mechanic, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on January 15, 1999 he injured his right knee when walking through the parking lot of the employing establishment. By letter dated April 13, 1999, the Office of Workers' Compensation Programs accepted appellant's claim for right knee strain.

On October 14, 1999 appellant underwent a diagnostic arthroscopy and arthroscopic partial medial meniscectomy on his right knee, performed by Dr. T. Craig Beeler, a Board-certified orthopedic surgeon.

In an unsigned progress note dated February 9, 2000, Dr. Beeler noted that appellant was still having pain and discomfort in his knee. He noted that appellant had arthritic changes in his knee and a torn cartilage. Dr. Beeler opined that appellant would have a four percent impairment to his lower extremity as a result of his injury.

In a May 11, 2000 note, the Office medical adviser indicated that pursuant to Table 64,¹ appellant had a two percent impairment of the lower extremity for the partial medial meniscectomy.

By letter dated July 20, 2000, the Office referred appellant for a second opinion evaluation. In a medical report dated September 1, 2000, Dr. Steven C. Weissfeld, a

¹ The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), Table 64, page 85.

Board-certified orthopedic surgeon, estimated that appellant sustained a two percent impairment of the lower extremity. He explained:

“[The] A.M.A., *Guides* was utilized to perform a [permanent partial impairment] (PPI) rating today. Section 3.2e [r]ange of [m]otion, pages 77-78, was utilized, primarily Table 41, page 78. Based on the patient’s range of motion, he retains 10 percent impairment as a result of osteoarthritis, this being because of his flexion contracture. This most likely predated his meniscal tear. Table 64, page 85, was also utilized in [s]ection 3.2I, Diagnosis-Based Estimates. The partial meniscectomy of the medial meniscus constitutes a [two] percent impairment of the lower extremity per the A.M.A., *Guides*. Section 8.2I, page 84, indicates that only one method should be utilized for impairment rating and that should be the estimate that ‘best describes the situation.’ In this case, range of motion loss is felt to be secondary to preexisting osteoarthritis and not the patient’s work-related meniscal tear. Therefore, it is felt that the diagnosis-related impairment estimate of [two] percent of the lower extremity is the most accurate.”

By decision dated October 5, 2000, the Office issued appellant a schedule award based on a two percent permanent impairment of his right leg.

The Board finds that appellant has not established greater than a two percent impairment to his right lower extremity for which he received a schedule award.

The schedule award provision of the Federal Employees’ Compensation Act² and its implementing federal regulation,³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁴ 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 implementing regulation as the appropriate standard for evaluating schedule losses.⁵

In the present case, Dr. Beeler rated appellant as sustaining a four percent impairment of his lower extremity. However, his opinion is of diminished weight as he failed to provide any explanation of how his assessment of permanent impairment was derived in accordance with the A.M.A., *Guides*. The Office medical adviser applied the A.M.A., *Guides* to note that under Table 64, at page 85 a partial medial meniscectomy provided for a two percent impairment. Dr. Weissfeld also utilized Table 64 of the A.M.A., *Guides* (4th ed.) to determine that appellant

² 5 U.C.S. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ 5 U.S.C. § 8107(c)(19).

⁵ See 20 C.F.R. § 10.404 (1999).

sustained a two percent impairment of the lower extremity due to the fact that he had a partial meniscectomy of the medial meniscus. The Office properly granted appellant a schedule award for a two percent impairment of the right lower extremity.

The decision of the Office of Workers' Compensation Programs dated October 5, 2000 is hereby affirmed.

Dated, Washington, DC
December 28, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member