

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WALTER F. NIED and ENVIRONMENTAL PROTECTION AGENCY,  
Chicago, IL

*Docket No. 99-1428; Submitted on the Record;  
Issued February 1, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 40 percent impairment of his left lower extremity for which he received schedule awards.

On June 16, 1994 appellant, then a 45-year-old emergency-on-scene coordinator, filed a claim for a traumatic injury occurring on June 9, 1994 in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for left knee strain and a medial meniscus tear.<sup>1</sup> Appellant underwent a partial medial meniscectomy of the left knee on July 26, 1994.

By decision dated May 31, 1995, the Office granted appellant a schedule award for a 10 percent permanent impairment of the left knee. In a letter dated August 15, 1995, appellant requested reconsideration of the award. On December 1, 1995 the Office modified its May 31, 1995 decision and, by decision dated December 19, 1995, issued appellant a schedule award for a 22 percent permanent impairment of the left leg.

On March 2, 1998 Dr. David F. Beigler, a Board-certified orthopedic surgeon, performed a partial medial meniscectomy on appellant's left knee. In an impairment rating dated April 29, 1998, he found that appellant had a 55 percent impairment of the left lower extremity due to impairments caused by loss of range of motion, pain and arthritis. In a report dated May 7, 1998,

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<sup>1</sup> The Office further accepted that appellant sustained a right knee medial meniscus tear due to his employment injury. In a decision dated August 14, 1997, the Office granted appellant a schedule award for a 37 percent impairment of the right lower extremity.

Dr. Beigler opined that appellant's knee reached maximum medical improvement on April 29, 1998. He found that appellant had 10 to 120 degrees range of motion which he found was an 8 percent impairment. Dr. Beigler stated:

“Additional impairment of function due to weakness and atrophy, as well as pain associated with arthritis is noted and is considered to reflect 10 percent. In addition, radiographs have demonstrated a 1 [millimeter] joint space, indicative of a 10 percent loss. The sum total is 28 percent.”

In a report dated April 28, 1998, Dr. John D. Sonnenberg, a Board-certified orthopedic surgeon, related that appellant had 120 degrees of flexion and normal extension of the left knee. He noted that appellant had “some laxity of the medial collateral ligament to his left knee.” Dr. Sonnenberg stated:

“[Appellant's] basic problem is medial compartment arthritis of his left knee. He has a mildly antalgic gait of the lower extremity which translates into a seven percent whole body impairment but he does have grade five strength which is near normal and his range of motion is within functional levels. His x-ray, however, shows no cartilage space in the medial compartment which translates into [a] 20 percent whole body impairment. This gives a 27 percent whole body impairment for this gentlemen.”

In an attached impairment rating, Dr. Sonnenberg indicated that appellant had a 55 percent impairment of the left lower extremity.

On May 18, 1998 an Office medical adviser found that appellant had a 1 percent impairment due to pain in the femoral nerve according to Tables 68 and 11 on pages 89 and 48 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993). He determined that appellant had no impairment due to loss of motion according to Table 41 on page 78 of the A.M.A., *Guides*, a 7 percent impairment due to “a varus alignment of the limb, as well as laxity of the medial collateral ligament,” and a 2 percent impairment due to his partial medial meniscectomy pursuant to Table 64 on page 84 of the A.M.A., *Guides*. The Office medical adviser further found that Table 62 on page 83 of the A.M.A., *Guides* provided for a 25 percent impairment due to one millimeter of “residual medial joint space as determined on x-ray.” He concluded that, using the Combined Values Chart, appellant had a 32 percent impairment of the left lower extremity.

By decision dated July 17, 1998, the Office granted appellant a schedule award for an additional 10 percent impairment of the left lower extremity.

On August 16, 1998 appellant requested reconsideration. In letters dated August 27 and October 6, 1998, the Office requested that Dr. Beigler explain the discrepancy between his April 29 and May 13, 1998 reports. In a letter dated September 3, 1998, Dr. Beigler indicated that the 55 percent impairment rating was appropriate for appellant.

An Office medical adviser reviewed the record on October 25, 1998 and found that appellant was entitled to an additional 10 percent impairment “due to a 10 degree flexion

contracture which was mentioned in Dr. Beigler's report from May 6, 1998" according to Table 41 on page 78 of the A.M.A., *Guides*. The Office medical adviser stated, "I also believe grade 3 pain should warrant an additional 20 percent of the maximum allowable for pain in that nerve root distribution (5 percent) or 1 percent." Applying the Combined Values Chart to these additional impairment, resulted in a total impairment of 40 percent. He noted that Dr. Beigler did not explain how he arrived at his finding that appellant had a 55 percent impairment.

In a report dated October 29, 1998, Dr. Beigler indicated that appellant may have as much as a 70 percent impairment of his left lower extremity. He noted that appellant had a 20 percent impairment due to loss of range of motion, a 13 percent impairment due to atrophy, a 12 percent impairment due to weakness and a 25 percent impairment due to arthritis, for a total impairment of 70 percent.

By decision dated December 3, 1998, the Office issued appellant a schedule award for an additional 8 percent impairment of the left lower extremity, for a total lower extremity impairment of 40 percent. The period of the award ran for 23.04 weeks from November 17, 1998 to April 27, 1999.

The Board finds that appellant has no more than a 40 percent impairment of his left upper extremity for which he received schedule awards.

Under section 8107 of the Federal Employees' Compensation Act,<sup>2</sup> and section 10.304 of the implementing federal regulations,<sup>3</sup> 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.<sup>4</sup>

In this case, Office medical advisers reviewed the evidence from appellant's attending physicians and applied the findings to the Tables and pages of the A.M.A., *Guides*. In a report dated May 18, 1998, an Office medical adviser found that appellant had a one percent impairment due to pain in the femoral nerve.<sup>5</sup> He found that appellant had no impairment due to loss of motion,<sup>6</sup> a seven percent impairment due to laxity of the medial collateral ligament<sup>7</sup> and a

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> *James J. Hjort*, 45 ECAB 595 (1994).

<sup>5</sup> A.M.A., *Guides* at 48, 89, Tables 11, 68.

<sup>6</sup> *Id.* at 78, Table 41.

<sup>7</sup> *Id.* at 84, Table 64.

two percent impairment due to his partial medial meniscectomy.<sup>8</sup> The Office medical adviser further found that appellant had a 25 percent impairment due to one millimeter of “residual medial joint space as determined on x-ray.”<sup>9</sup> He combined the values using the Combined Values Chart and concluded that appellant had a 32 percent impairment of the left lower extremity.<sup>10</sup>

An Office medical adviser further reviewed the medical evidence on October 25, 1998 and found that appellant was entitled to an additional 10 percent impairment due to his 10 degrees of flexion contracture.<sup>11</sup> He also awarded appellant an additional one percent impairment for pain.<sup>12</sup> Applying the Combined Values Chart for these additional impairments, the Office medical adviser found a total 40 percent impairment of the left lower extremity.

While appellant’s attending physicians found that he had more than a 40 percent impairment of the left lower extremity, they did not correlate their findings to the appropriate tables and pages of the A.M.A., *Guides* and thus their reports are of diminished probative value. The Office, in FECA Bulletin No. 95-17, issued March 23, 1995, noted 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.” The bulletin specifies that Table 62 should not be used with Tables 68 or 41 and Table 64 should not be used with Tables 68 or 41.<sup>13</sup> In this case, appellant’s physicians used all of these tables together, which does not conform with the A.M.A., *Guides* and resulted in a substantial error of the estimate of impairment. There is no evidence of record in accordance with the tables and provisions of the A.M.A., *Guides* and the Office’s procedure manual which would establish that appellant has more than a 40 percent impairment of his left lower extremity.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 83, Table 62.

<sup>10</sup> *Id.* at 322.

<sup>11</sup> *Id.* at 78, Table 41.

<sup>12</sup> *Id.* at 48, 89, Tables 11, 68.

<sup>13</sup> FECA Bulletin No. 96-17 (issued September 20, 1996) references the tables listed in FECA Bulletin No. 95-17 without changes. Further, the Office has implemented FECA Bulletin No. 95-17 in its procedure manual. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exh. 4 (October 1995).

The decisions of the Office of Workers' Compensation Programs dated December 2 and July 17, 1998 are hereby affirmed.

Dated, Washington, DC  
February 1, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member