

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of AGNES A. BUTLER and DEPARTMENT OF THE NAVY,  
NAVAL AIR STATION, Patuxent River, MD

*Docket No. 00-410; Submitted on the Record;  
Issued January 8, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has more than a 28 percent permanent impairment to the left leg.

In a decision dated October 8, 1997, the Office of Workers' Compensation Programs issued a schedule award for a 10 percent permanent impairment to the left leg. By decision dated October 13, 1998, the Office issued a schedule award for an additional 18 percent. In a decision dated August 25, 1999, the Office denied modification of the prior decision.

The Board has reviewed the record and finds that appellant has not established more than a 28 percent permanent impairment to her left leg.

Section 8107 of the Federal Employees' 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.<sup>1</sup> 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 justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>2</sup>

Appellant contends that she has a 35 percent permanent impairment to her left leg, based on the reports of Dr. Bruce L. Beck, an orthopedic surgeon,<sup>3</sup> who opined in an October 20, 1997

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<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

<sup>2</sup> A. George Lampo, 45 ECAB 441 (1994).

<sup>3</sup> Dr. Beck initially served as a second opinion referral physician, and then became an attending physician.

report that appellant had a 35 percent permanent impairment under the A.M.A., *Guides*. He reiterated this opinion in reports dated June 2 and October 27, 1998.

Dr. Beck found that appellant had a 20 percent impairment based on a 2 millimeter cartilage interval for the left knee, a 10 percent impairment for partial meniscectomy, medial and lateral, and a 10 percent impairment for loss of range of motion in the knee.<sup>4</sup> It is Dr. Beck's contention that all of these impairments should be combined, resulting in a 35 percent impairment under the Combined Values Chart.<sup>5</sup>

It is well established, however, that diagnosis-based impairments from Table 64, such as the 10 percent impairment for partial medial and lateral meniscectomy, are not to be combined with impairments for loss of range of motion. The A.M.A., *Guides* indicate that the examiner should determine which approach best describes the situation, and use only one approach.<sup>6</sup> Office procedures specifically indicate that Table 64 is not to be combined with Table 41 or any of the range of motion tables, because this would result in duplicate measurements.<sup>7</sup> Similarly, Table 62, impairment based on cartilage interval, is not to be combined with range of motion impairments.<sup>8</sup> The Office medical adviser, in a report dated October 5, 1998, combined the 20 percent for cartilage interval impairment under Table 62, with the 10 percent impairment under Table 64, for a 28 percent impairment under the Combined Values Chart. This represents a proper application of the A.M.A., *Guides* to the findings by Dr. Beck. No additional probative evidence was submitted establishing more than a 28 percent permanent impairment in this case.

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<sup>4</sup> A.M.A., *Guides* (4<sup>th</sup> ed. rev. 1993) 78, Table 41 (knee impairments due to loss in range of motion), 83, Table 62 (arthritis impairments based on cartilage intervals), and 85, Table 64, (impairment estimates for certain leg impairments).

<sup>5</sup> *Id.*, 322, 24. The A.M.A., *Guides* note that the method for combining impairments is based on the idea that a second or succeeding impairment should apply not to the whole, but only to the part that remains after the first impairments have been applied.

<sup>6</sup> A.M.A., *Guides* at 84.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (October 1995).

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

The decision of the Office of Workers' Compensation Programs dated August 25, 1999 is affirmed.

Dated, Washington, DC  
January 8, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member