

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIM D. HILL and DEPARTMENT OF JUSTICE, BUREAU OF PRISONS,
FEDERAL CORRECTIONAL INSTITUTION, Waseca, MN

*Docket No. 02-767; Submitted on the Record;
Issued August 13, 2002*

DECISION and ORDER

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

The issue is whether appellant has more than a 24 percent permanent impairment of the right lower extremity for which he received a schedule award.

The Board has reviewed the record and finds that the case is not in posture for decision.

On August 25, 1999 appellant, then a 35-year-old executive assistant, filed a traumatic injury claim for an injury to his right knee on August 23, 1999 while he was playing in an employing establishment-sponsored softball game.

On November 2, 1999 the Office of Workers' Compensation Programs accepted appellant's claim for a ruptured patellar tendon and subsequent surgery.

In a report dated February 14, 2001, Dr. Paul C. Matson, an orthopedic surgeon and an Office referral physician, stated that appellant had an 8 percent permanent impairment of the right lower extremity based on range of motion of 5 to 125 degrees, a 6 percent permanent impairment based on quadriceps muscle weakness due to a Grade 2 loss of strength (femoral nerve), and a 6 percent permanent impairment based on hamstring muscle weakness. He based his calculation on the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a memorandum dated May 14, 2001, an Office medical adviser, Dr. David H. Garelick, stated that appellant had a 24 percent permanent impairment of the right lower extremity according to Dr. Matson's report, based on an 8 percent impairment for quadriceps muscle weakness (Grade 4/5) according to Table 68 on page 89 and Table 12 at page 49 of the 4th edition of the A.M.A., *Guides* (femoral nerve), a 15 percent impairment based on hamstring muscle weakness (sciatic nerve) according to Table 68 at page 89 and Table 12 at page 49, and a 2 percent impairment based on loss of range of motion (extension of -5 degrees) according to Table 41 at page 78. According to the Combined Values Chart on page 322 of the A.M.A., *Guides*, the separate impairment percentages totaled a 24 percent permanent impairment.

By decision dated October 23, 2001, the Office granted appellant a schedule award for 69.12 weeks based on a 24 percent permanent impairment of the right lower leg.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.² Appellant thus bears the burden to establish that he has more than a 24 percent permanent impairment of his right lower extremity causally related to his August 23, 1999 employment injury or authorized surgery.

The schedule award provisions of the Act³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. 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.

In a memorandum dated May 14, 2001, the Office medical adviser, Dr. Garelick, stated that appellant had a 24 percent permanent impairment of the right lower extremity according to Dr. Matson's report, based on an 8 percent impairment for quadriceps muscle weakness according to Table 68 on page 89 and Table 12 at page 49 of the 4th edition of the A.M.A., *Guides* (femoral nerve), a 15 percent impairment based on hamstring muscle weakness (sciatic nerve) according to Table 68 at page 89 and Table 12 at page 49, and a 2 percent impairment based on loss of range of motion (extension of -5 degrees) according to Table 41 at page 78. According to the Combined Values Chart on page 322 of the A.M.A., *Guides*, the separate impairment percentages totaled a 24 percent permanent impairment.

In this case, the applicable edition of the A.M.A., *Guides* is the 5th edition.⁵ The tables in the 5th edition do not differ in substance from the tables in the 4th edition as applied by Dr. Garelick. However, Dr. Garelick, did not correctly calculate the percentages based on these tables. According to Table 17-37 at page 552 of the 5th edition of the A.M.A., *Guides* and Table 16-11 (see page 550, section 17.21) at page 484 (Table 68 at page 89 and Table 12 at page 49 in the 4th edition used by Dr. Garelick), appellant has a 9 percent permanent impairment of the right lower extremity based on sensory deficit of the femoral nerve (affecting the quadriceps muscle) (37 percent x 25 percent = 9.25 percent, rounded to 9 percent). Appellant has a 19 percent permanent impairment of the right lower extremity based on Table 17-37 at page 552 and

¹ 5 U.S.C. §§ 8101-8193.

² See *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ The fifth edition of the A.M.A., *Guides* became effective February 1, 2001. See FECA Bulletin No. 01-05, issued January 29, 2001.

Table 16-11 at page 484 based on sensory deficit of the sciatic nerve (affecting the hamstring muscle) (75 percent x 25 percent = 18.75 percent, rounded to 19 percent). Appellant has a 10 percent permanent impairment of the right lower extremity for loss of range of motion in flexion contracture (extension) according to Table 17-10 at page 537 of the 5th edition of the A.M.A., *Guides* (Table 41 at page 78 of the 4th edition) These separate percentages are combined using the Combined Values Chart on page 604 and result in a total impairment of the right lower extremity of 34 percent. Upon return of the case record, the Office should recalculate the schedule award to which appellant is entitled for his permanent impairment of the right lower extremity.

The decision of the Office of Workers' Compensation Programs dated October 23, 2001 is set aside and remanded for further development to be followed by a *de novo* decision.

Dated, Washington, DC
August 13, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member