

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH J. HUNT and DEPARTMENT OF JUSTICE, IMMIGRATION &
NATURALIZATION SERVICE, U.S. BORDER PATROL, Tucson, AZ

*Docket No. 03-1857; Submitted on the Record;
Issued September 17, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he had more than a two percent permanent impairment of his right leg, for which he received a schedule award.

On September 22, 2002 appellant, then a 51-year-old senior patrol agent, filed a traumatic injury claim alleging that on that date he sustained a right knee injury when he felt his knee pop while walking on uneven ground at work.¹ The Office of Workers' Compensation Programs accepted that appellant sustained internal derangement of the right knee and, on October 22, 2002, he underwent an arthroscopy and partial medial meniscectomy of his right knee which was authorized by the Office. The surgery was performed by Dr. William J. Quinlan, an attending Board-certified orthopedic surgeon. Appellant had previously undergone right medial meniscus surgery on February 5, 2002 in connection with a January 20, 2002 employment injury to the right knee.² The record contains limited documentation regarding the January 20, 2000 injury and the February 5, 2000 surgery.

In a report dated September 25, 2002, Dr. Quinlan indicated that he treated appellant for a recent right knee injury. He stated, "[Appellant] has had prior surgery on the knee and was last seen in March and had his case closed at that point with a five percent impairment secondary to meniscectomy." In a report dated December 6, 2002 report, Dr. Quinlan indicated that appellant had early degenerative arthritis of the medial compartment which he believed was "secondary to his industrial injuries with respect to cartilage tears times two." He indicated that appellant had mild varus in both knees and subjective joint line tenderness of the right knee, but that he did not have effusion or major flexion contractions of the right knee. Dr. Quinlan stated, "I would rate

¹ Appellant stopped work on September 25, 2002 and returned to work in late December 2002. The Office file number for this claim is 132064070.

² The file number for this prior Office claim is 132047070. Appellant returned to regular duty after the January 20, 2002 injury and subsequent surgery. The operative report from October 2002 indicated the existence of some mild degenerative changes in the right knee and evidence of a prior partial meniscectomy.

his impairment in the right lower extremity at 15 percent based on the meniscectomies times two, as well as the early degenerative disease, loss of motion and minimal pain symptoms.”

In a report dated February 10, 2003, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon who served as an Office consultant, indicated that a review of the medical record revealed that appellant’s diagnosis was status post October 22, 2002 right knee arthroscopy and partial medial meniscectomy. Dr. Harris stated that, at the time of his October 2002 surgery, appellant had mild degenerative changes with no evidence of joint space narrowing. He noted that an examination on December 6, 2002 showed that appellant’s condition was stable and he had joint line tenderness without obvious instability. Dr. Harris indicated that the date of maximum medical improvement was December 6, 2002. He concluded that, according to Table 17-33 on page 546 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), appellant had a two percent permanent impairment of his right leg based on the October 2002 partial medial meniscectomy of his right knee.

By award of compensation dated June 27, 2003, the Office granted appellant a schedule award for a two percent permanent impairment of his right leg. The award ran for 5.76 weeks from December 6, 2002 to January 15, 2003.

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he had more than a two percent permanent impairment of his right leg, for which he received a schedule award.

An employee seeking compensation under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,⁴ including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.⁵ The schedule award provisions of the Act⁶ and its implementing regulation⁷ 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.⁸

³ 5 U.S.C. §§ 8101-8193.

⁴ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (1999).

⁸ *Id.*

In the present case, the Office granted appellant a schedule award for a two percent permanent impairment of his right leg. The Office based its determination on a February 10, 2003 report in which Dr. Harris, a Board-certified orthopedic surgeon who served as an Office consultant, concluded that, according to Table 17-33 on page 546 of the A.M.A., *Guides* (5th ed. 2001), appellant had a two percent permanent impairment of his right leg based on the October 22, 2002 partial medial meniscectomy of his right knee.⁹ In his February 10, 2003 report, Dr. Harris discussed the effects of appellant's September 22, 2002 employment injury and subsequent surgery on October 22, 2002.

The Board notes; however, that Dr. Harris' and the Office's determination of the permanent impairment of appellant's right leg did not adequately consider the effects of his prior work-related right knee injury on January 20, 2002 and his related right knee surgery on February 5, 2002. The record contains very limited documentation concerning the January 20, 2002 injury and the February 5, 2002 surgery.¹⁰ It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹¹ Therefore, the case should be remanded to the Office for further development of the evidence to include a proper consideration of all the relevant work-related injuries and surgeries pertaining to appellant's right leg. After such development as the Office deems necessary, the Office shall issue an appropriate decision regarding the extent of the permanent impairment of appellant's right leg.¹²

⁹ A.M.A., *Guides* 546, Table 17-33.

¹⁰ The precise nature of the January 20, 2002 injury accepted by the Office remains unclear. Although there is some suggestion that appellant underwent a right partial medial meniscectomy on February 5, 2002, the actual nature of the surgery performed on the date is unknown.

¹¹ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹² The record contains a September 25, 2002 report in which Dr. Quinlan, an attending Board-certified orthopedic surgeon, suggested that appellant had a 5 percent impairment of his right leg and a December 6, 2002 report in which Dr. Quinlan suggested that he had a 15 percent impairment of his right leg. While neither of these reports explains how these ratings were calculated in accordance with the relevant standards of the A.M.A., *Guides*, they should be considered in conjunction with the Office's development of the evidence. The record further reveals that appellant has arthritis in his right knee and consideration should be given to whether such a condition contributes to permanent impairment of his right knee; see A.M.A., *Guides* 526, 544-45.

The decision of the Office of Workers' Compensation Programs dated June 27, 2003 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
September 17, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member