United States Department of Labor
Employees' Compensation Appeals Board

NORMAN D. ARMSTRONG, Appellant	)	
and	)	**Docket No. 04-306**
	)	**Issued: June 23, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Tulsa, OK, Employer	)	

Appearances:
Norman D. Armstrong, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 17, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated July 8 and October 27, 2003, granting a schedule award for a 10 percent impairment of his left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue is whether appellant has more than a 10 percent impairment to his left lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On January 27, 2001 appellant, then 38-year-old-clerk, filed a traumatic injury claim (Form CA-1), alleging that he injured his left knee on that date when he caught his foot while moving a mail cart. The Office accepted the claim for a left knee strain with internal derangement and authorized surgery. On February 5, 2003 a partial medial and lateral

meniscectomy was performed. Appellant returned to light duty on February 12, 2003 and to full-time unrestricted duty on March 4, 2003.[1]

Appellant requested a schedule award and submitted a report from Dr. James Cash, an attending Board-certified orthopedic surgeon. In April 14 and 25, 2003 reports, Dr. Cash stated that appellant's left knee was doing well, with no pain or swelling, a full range of motion and good strength. He noted that, under the fifth edition of American Medical Association, *Guides to the Evaluation of Permanent Impairment,* a partial medial and lateral meniscectomy represents a 4 percent whole person or 10 percent lower extremity impairment. Dr. Cash stated that appellant's cartilage damage represented a 3 percent whole person or 7 percent lower extremity impairment for a combined 7 percent whole person or 17 percent lower extremity impairment.

In a May 14, 2003 letter, the Office referred the case record to Dr. Ronald Blum, a Board-certified orthopedic surgeon and the Office medical adviser. In a May 22, 2003 report, he applied Table 17-33, page 546 of the fifth edition of the A.M.A., *Guides,* to find that appellant was entitled to 10 percent impairment for the partial medial and lateral meniscectomy. Dr. Blum noted that the date of maximum medical improvement was April 14, 2004. He stated:

> "Dr. Cash also recommends further impairment for cartilage damage noted at the time of the arthroscopy and chondroplasty. The fifth edition of the A.M.A., *Guides* does not recommend impairment for articular damage based on direct observation at the time of surgery. It requires utilization of weight bearing x-ray evaluation to determine cartilage interval (section 17.2h, p[age] 544). If Dr. Cash feels it is indicated, he may submit another report including cartilage interval determination and this report can be amended at that time."

In a July 8, 2003 decision, the Office granted a schedule award for 10 percent impairment of the left lower extremity.

Appellant requested reconsideration and submitted a July 15, 2003 letter from Dr. Cash, who stated that, while the fifth edition of the A.M.A., *Guides* does not recommend impairment of the articular cartilage damage based on direct observation at the time of surgery, it also did not exclude such method of evaluation. He noted that page 544 of the A.M.A., *Guides* provided: "the best Roentgenographic indicator of disease stage and impairment for a person with arthritis is the cartilage interval or joint space" and that, "the hallmark of all types of arthritis is thinning of the articular cartilage." Dr. Cash noted that the A.M.A., *Guides* states: "For most individuals, Roentgenographic rating is a more objective and valid method for assign[ing] of impairment estimates than physical findings." He further stated:

> "Certainly all surgeons know that the best indicator of cartilage damage is direct visualizations, particularly by the outer bridge method of determining cartilage damage which assigns a percentage loss of thickness cartilage as well as other

[1] Appellant sustained a June 27, 2001 employment injury to his right knee. On April 9, 2002 the Office granted him a schedule award for a 22 percent impairment of his right lower extremity. No appeal was made from the April 9, 2002 schedule award.

indicators. As all orthopedic surgeons know, Roentgenographic methods are inherently unreliable at determining depth of cartilage damage in that depending on the weight bearing state as well as the degree of flexion of the knee with the x-ray, the cartilage width can vary widely. The most reliable indicator is direct visualization. Therefore I believe that my initial dictation in regard to a permanent impairment rating from April 14, 2003, is appropriate and correct and I do not feel that it is indicated to change that impairment rating or amend the report."

In an October 3, 2003 letter, the Office referred Dr. Cash's report to Dr. Blum, the Office medical adviser, who reiterated that the A.M.A., *Guides* require the use of weight-bearing x-ray studies to determine a quantitative estimate of impairment resulting form articular cartilage damage. He added that no further impairment was indicated by the additional information from Dr. Cash. In an October 27, 2003 decision, the Office denied modification of the July 8, 2003 decision.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[3]

The schedule award provision of the Act[4] and its implementing regulation[5] 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.[6]

ANALYSIS

The Board finds that the opinion of Dr. Blum, a Board-certified orthopedic surgeon and the Office medical adviser, is the only medical report that conforms with the relevant standards of the A.M.A., *Guides*. In a May 22, 2003 report, Dr. Blum correctly applied Table 17-33 on page 546 of fifth edition of the A.M.A., *Guides* to determine that appellant was entitled to a 10 percent impairment of the left lower extremity for his partial medial and lateral meniscectomy.

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[2] 5 U.S.C. §§ 8101-8193.

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

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (2003).

[6] *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

Moreover, he properly explained in his May 22 and October 3, 2003 reports, that it was not appropriate to add an impairment rating for cartilage intervals visually assessed at surgery, as was suggested by Dr. Cash, appellant's attending Board-certified orthopedic surgeon.

In a July 15, 2003 letter, Dr. Cash discussed section 17.2h, page 544 of the A.M.A., *Guides,* but he did not address Table 17-31 on the same page which is provided to determine the percentage of impairment based on the size of the cartilage intervals. The Board notes that the heading of Table 17-31 is "Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals" and is the only table provided for determining impairment resulting from an arthritic condition to the lower extremity. As there is no table provided to determine the impairment based on the visualization, it is not clear how Dr. Cash concluded the appropriate percentage to apply to appellant's condition. Dr. Cash argued that it would be appropriate to include an impairment rating for cartilage intervals visually assessed at surgery based on a passage from page 544 of the A.M.A., *Guides*, which he partially quoted, "[F]or most individuals, roentgenographic rating is a more objective and valid method for assigning impairment estimates than physical findings…." He argued that appellant did not fall into the category of "most individuals."[7] However, when this passage is read in full, the A.M.A., *Guides* discusses the utility of using cartilage interval ratings versus other forms of ratings such as range of motion or joint crepitation. The passage does not address the utility of using roentgenographic-based cartilage interval measurements versus visually-based cartilage interval measurements.

The Board finds that Dr. Cash's reports do not conform with the A.M.A., *Guides* and are, therefore, of diminished probative value and cannot constitute the weight of the medical evidence or create a conflict with Dr. Blum's reports. As the reports of Dr. Blum provided the only evaluation which conform with the protocols of the A.M.A., *Guides*, his opinion constitutes the weight of the medical evidence.[8] Dr. Blum reviewed the clinical findings made by Dr. Cash and explained his application of the A.M.A., *Guides.* As noted, the A.M.A., *Guides* has been adopted to provide for a single set of tables to achieve uniform standards applicable to all claimants. The use of roentgenographic-based cartilage interval measurements provides a uniform standard for the determination of impairment rather than a subjective measurement made by visualization at the time of surgery.

CONCLUSION

Appellant has not established that he has more than a 10 percent impairment to his left lower extremity.

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[7] Appellant made a similar argument on appeal.

[8] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

ORDER

IT IS HEREBY ORDERED THAT the October 27 and July 8, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 23, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member