United States Department of Labor
Employees' Compensation Appeals Board

ALAND W. CLARK, Appellant	)	
and	)	**Docket No. 05-1104**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, Miami, FL, Employer	)	**Issued: August 4, 2005**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 18, 2005 appellant, through his attorney, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' hearing representative dated April 12, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On October 18, 2003 appellant, then a 34-year-old immigration enforcement agent, twisted his left knee on that date in the performance of duty when he was extracting an inmate from a government vehicle. The Office initially accepted his claim for left chondromalacia patella and medial meniscus tear.

On January 7, 2004 appellant underwent an authorized arthroscopy of the left knee with debridement of the posterior horn, medial meniscus and debridement of the left fat pad. Dr. Domingo Delgado-Garcia, a Board-certified orthopedic surgeon, stated that "the patient had less than 20 percent of the meniscus removed of the posterior horn." On March 24, 2004 he released appellant to return to full duty stating that he had reached maximum medical improvement with a four percent impairment of the left lower extremity due to his meniscectomy. Dr. Delgado-Garcia noted that the left knee portals were well healed, that he observed no effusion, that the patella had a normal glide, and no instability to Lachman's test and a negative McMurray's test.

In a December 13, 2004 report, Dr. Harry R. Collins, an Office medical adviser, advised that appellant was status post surgery to the left knee on January 7, 2004 and that maximum medical improvement was reached March 24, 2004. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (5th ed. 2001),[1] Dr. Collins opined that appellant had a two percent impairment of the lower extremity based on Table 17-33, page 546 on account of the partial meniscectomy.

By decision dated December 21, 2004, the Office awarded appellant a two percent impairment to the left lower extremity noting a date of maximum medical improvement of March 24, 2004. The Office indicated that, since appellant had received compensation through May 15, 2004, his schedule award would begin on May 16, 2004 and run for 5.76 weeks to June 25, 2004.[2]

In a letter dated December 27, 2004, appellant, through counsel, requested review of the written record. In a decision dated April 12, 2005, a hearing representative affirmed the Office's December 12, 2004 decision finding that appellant had no more than a two percent impairment of the left lower extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] sets 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* (5th ed. 2001) has been

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[1] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[2] The Office indicated that appellant had not filed a CA-7 claim for a schedule award but that it had nonetheless processed the claim as if one had been filed.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

ANALYSIS

The Office accepted that appellant sustained a left knee injury for which he underwent arthroscopic surgery. His attending surgeon, Dr. Delgado-Garcia, advised on March 24, 2004 that appellant had reached maximum medical improvement and provided an impairment rating of four percent. However, the physician did not refer to the A.M.A., *Guides* in providing his estimate of appellant's impairment rating.

Dr. Delgado-Garcia's report was reviewed by Dr. Collins, an Office medical adviser, who, in a report dated December 13, 2004, found that maximum medical improvement had been reached on March 24, 2004 and properly referenced the fifth edition of the A.M.A., *Guides* and advised that, pursuant to Table 17-33, appellant was entitled to a two percent right lower extremity impairment.

The A.M.A., *Guides*, Chapter 17, provides impairment ratings of the lower extremities for diagnosis-based estimates, including specific disorders of the knee, such as a torn meniscus or meniscectomy.[6] Section 17.2j of the A.M.A., *Guides*[7] discusses diagnosis-based impairments, and Table 17-33 indicates that a partial medial meniscectomy is equal to two percent lower extremity impairment.[8] In this case, Dr. Delgado-Garcia's January 7, 2004 operative report establishes that appellant underwent a partial medial meniscectomy. As the report of Dr. Collins, the Office medical adviser, constituted the only medical evidence of record that conformed with the A.M.A., *Guides*, the Board finds that Dr. Collins correctly determined that appellant was entitled to a two percent impairment of the left lower extremity for his partial medial meniscectomy, and the medical evidence of record, therefore, does not establish that appellant was entitled to a schedule award greater than the two percent granted.[9]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish he is entitled to greater than a two percent impairment of the left lower extremity.

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[5] *Willie C. Howard*, 55 ECAB ___ (Docket No. 04-342 & 04-464, issued May 27, 2004).

[6] *Philip A. Norulak*, 55 ECAB ___ (Docket No. 04-817, issued September 3, 2004).

[7] A.M.A., *Guides*, *supra* note 1 at 545.

[8] *Id*. at 546.

[9] The Board notes that appellant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 12, 2005 is affirmed.

Issued: August 4, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board