



spurring of the patella and the patellar tendon insertion. The findings of January 15, 2002 magnetic resonance imaging testing of his right knee showed cartilage loss along the patella.<sup>1</sup>

On April 30, 2002 Dr. Phillip A. Medina, an attending Board-certified orthopedic surgeon, performed a partial medial meniscectomy with chondroplasty of the medial femoral condyle and patellofemoral compartment. The procedure was authorized by the Office.<sup>2</sup> In a June 10, 2004 report, Dr. Medina stated that appellant's right knee problem was "medically fixed and stable." He concluded that, under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001), he had a two percent permanent impairment of his right leg due to his right partial medial meniscectomy.<sup>3</sup>

In a December 20, 2006 decision, the Office granted appellant a schedule award for a two percent permanent impairment of his right leg. The award ran for 5.76 weeks. In a July 18, 2007 decision, an Office hearing representative set aside the December 20, 2006 decision and remanded the case to the Office for further development of the medical evidence regarding the extent of appellant's right leg impairment.<sup>4</sup>

On remand the Office referred appellant to Dr. Richard E. Hall, a Board-certified orthopedic surgeon, for examination and an opinion on the extent of his right leg impairment. On October 4, 2007 Dr. Hall indicated that appellant exhibited right knee effusion and patellofemoral crepitation on examination. He indicated that appellant had degenerative joint disease of his right knee which preexisted his January 8, 2002 injury and suggested that this condition should not be included in his impairment rating because it was preexisting. Dr. Hall concluded that appellant had a two percent permanent impairment of his right leg under Table 17-33 of the A.M.A., *Guides* for his April 30, 2002 partial medial meniscectomy.

The record contains a June 4, 2007 report of Dr. Claiborne A. Christian, an attending Board-certified orthopedic surgeon, who stated that appellant had pain and a crunching sensation in his right knee. Dr. Christian concluded that appellant had a seven percent permanent impairment of his right leg comprised of a two percent impairment under Table 17-33 of the A.M.A., *Guides* (for his partial medial meniscectomy) and a five percent impairment under Table 17-31 (for his knee arthritis).<sup>5</sup>

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<sup>1</sup> Reports of medical treatment of appellant's right knee show that he had patellofemoral pain and crepitation. Appellant retired from the employing establishment effective August 19, 2002.

<sup>2</sup> There is some indication in the record that appellant had several prior right knee surgeries, but the record does not contain detailed documents describing these surgeries. In a December 16, 2003 report, Dr. Patrick N. Bays, a Board-certified orthopedic surgeon serving as an Office referral physician, stated that appellant had right knee arthritis and chondromalacia which preexisted his January 8, 2002 employment injury.

<sup>3</sup> The record also contains a June 14, 2004 report of Dr. Thomas H. Castle, Jr., another attending Board-certified orthopedic surgeon, which contains a similar assessment of appellant's right leg impairment.

<sup>4</sup> At the hearing before the Office hearing representative, appellant argued that his schedule award should include preexisting impairments of his right leg.

<sup>5</sup> Dr. Christian indicated that appellant had preexisting degeneration of his right patella.

In a November 5, 2007 decision, the Office determined that appellant had a two percent permanent impairment of his right leg due to his right partial medial meniscectomy.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>6</sup> and its implementing regulation<sup>7</sup> 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.<sup>8</sup> It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.<sup>9</sup>

### **ANALYSIS**

The Office granted appellant schedule award for a two percent permanent impairment of his right leg based on his April 30, 2002 partial medial meniscectomy. Appellant contended that he had a greater impairment of his right leg, arguing that his schedule award should include preexisting impairments of his right leg.

The Board finds that, under Table 17-33 of the A.M.A., *Guides*, appellant is entitled to a two percent impairment rating for his partial medial meniscectomy which was performed on April 30, 2002 by Dr. Medina, an attending Board-certified orthopedic.<sup>10</sup> This impairment rating is supported by several opinions of record, including the opinion of Dr. Medina and the opinion of Dr. Hall, a Board-certified orthopedic surgeon who served as an Office referral physician.

The Board further finds, however, that appellant is also entitled to a five percent impairment rating for arthritis under Table 17-31 of the A.M.A., *Guides*.<sup>11</sup> The medical record reveals that appellant had arthritis of his right knee which preexisted his January 8, 2002 employment injury. The Board has consistently held that preexisting impairments of the body are to be included in determining the amount of a schedule award for a member of the body that

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<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404 (1999).

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

<sup>9</sup> See *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b. (June 1993). This portion of Office procedure provides that the impairment rating of a given scheduled member should include "any preexisting permanent impairment of the same member or function."

<sup>10</sup> See A.M.A., *Guides* 546, Table 17-33.

<sup>11</sup> *Id.* at 544.

sustained an employment-related permanent impairment.<sup>12</sup> The inclusion of this five percent impairment rating is supported by a June 4, 2007 report of Dr. Christian, an attending Board-certified orthopedic surgeon, who indicated that appellant was entitled to both a two percent impairment under Table 17-33 of the A.M.A., *Guides* (for his partial medial meniscectomy) and a five percent impairment under Table 17-31 (for his knee arthritis).<sup>13</sup>

For these reasons, the Board finds that the evidence of record shows that appellant has a combined total permanent impairment of his right leg of seven percent. As appellant has already been compensated for a two percent permanent impairment of his right leg, he is entitled to an additional schedule award for a five percent permanent impairment of his right leg.

### CONCLUSION

The Board finds that the evidence shows that appellant has total permanent impairment of his right leg of seven percent. Therefore appellant is entitled to additional schedule award compensation for five percent permanent impairment of his right leg.

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<sup>12</sup> See *supra* note 9 and accompanying text.

<sup>13</sup> Appellant met the requirements of the last footnote of Table 17-31 in that he had a history of direct trauma to his right knee, complaints of patellofemoral pain and crepitation on physical examination. There is no indication in the record that appellant had clearly measurable joint space narrowing as demonstrated by x-rays which would entitle him to a greater impairment rating for arthritis. See A.M.A., *Guides* 544, Table 17-31. It is permissible to combine the values for arthritis and diagnosis based estimates (based on surgery in this case). *Id.* at 526, Table 17-2. The two percent and five percent values were properly combined to equal seven percent. *Id.* at 604, Combined Values Chart.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' November 5, 2007 merit decision is affirmed, as modified to reflect that appellant has total permanent impairment of his right leg of seven percent.

Issued: August 18, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board