



Appellant filed a claim for a schedule award. In July 2008, Dr. George L. Rodriguez, a physiatrist, compared the circumferences of appellant's thighs and found the right to be 0.5 centimeters smaller. He also compared the calves and found the right to be 1.5 centimeters smaller. On August 10, 2008 Dr. Rodriguez offered an impairment rating of seven percent of the right lower extremity due to mild calf atrophy. As appellant was suffering significantly from right knee pain, he included an additional pain-related impairment.

On August 12, 2008 Dr. Rodriguez again compared appellant's thighs but found the right to be 2.0 centimeters larger. He found the right calf to be 2.0 centimeters larger than the left calf. Dr. Rodriguez continued to report through March 2009 that appellant's right thigh and calf were larger than his left.

An Office medical adviser noted the inconsistency in thigh and calf measurements, with apparent atrophy on the right becoming apparent atrophy on the left. He found that the findings were unreliable and should not be used to determine permanent impairment. The medical adviser found that a rating for patellofemoral pain was the most applicable rating under the circumstances. Appellant had a history of direct trauma to the joint, he had a complaint of pain around the patellofemoral joint, and there was crepitation on physical examination. The medical adviser therefore found a five percent impairment of the right lower extremity. He added that no additional rating for pain was appropriate, as the rating already addressed patellofemoral pain.

In a decision dated April 30, 2009, the Office issued a schedule award for a five percent impairment of appellant's right lower extremity.

On appeal, appellant's representative argues that the Board should either accept Dr. Rodriguez' measurements or remand the case for a second opinion evaluation to determine the proper measurements of appellant's calf and thigh.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>2</sup>

A claimant seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

## ANALYSIS

To support his claim for a schedule award, appellant submitted an impairment rating from his physiatrist, Dr. Rodriguez, who based his August 10, 2008 impairment rating on mild atrophy in the right calf and an additional pain-related impairment. The atrophy noted on examination that date differed with that subsequently reported by the physician. On August 12, 2008 Dr. Rodriguez reported that appellant now had moderate atrophy in the left thigh and moderate atrophy in the left calf when compared to the right.<sup>4</sup> He would continue to report relative atrophy on the left through March 2009. The Board finds that Dr. Rodriguez' impairment rating is of diminished probative value. His measurements from July to August 2008 are inconsistent and remain unexplained. Dr. Rodriguez' measurements after the August 10, 2008 impairment rating show no impairment of the right lower extremity due to atrophy.

Table 17-31, page 544 of the A.M.A., *Guides* provides impairment estimates for arthritis based on joint space narrowing. In an individual with a history of direct trauma, a complaint of patellofemoral pain, and crepitation on physical examination, but without joint space narrowing on x-rays, the table states that a five percent lower extremity impairment is given. The Office medical adviser confirmed that appellant met these criteria. The impairment rating based on patellofemoral pain is supported by the medical evidence of record and it appropriately reflects appellant's primary complaint of right knee pain.

The Board finds that the medical evidence supports no more than a five percent impairment of appellant's right lower extremity due to patellofemoral pain. As this rating directly encompasses pain, and as the chapter in the A.M.A., *Guides* devoted to pain-related impairment should not be redundant of or inconsistent with principles of impairment rating described in other chapters<sup>5</sup>, the Office properly awarded no additional rating for pain-related impairment. The Board will affirm the Office's April 30, 2009 decision.

The Board cannot, as appellant's representative suggests, accept Dr. Rodriguez' July 2008 measurements. The unexplained change in measurements from July to August 2008 raises the question of reliability; unreliable findings provide no basis for the payment of a schedule award. As for directing the Office to further develop the medical evidence to reliably determine circumferences, it is appellant who bears the burden of proof to establish his entitlement to a schedule award.

## CONCLUSION

The Board finds that appellant has no more than a five percent impairment of his right lower extremity.

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<sup>4</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* 530 (5<sup>th</sup> ed. 2001) (Table 17-6).

<sup>5</sup> A.M.A., *Guides* 570.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2010  
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