

**United States Department of Labor
Employees' Compensation Appeals Board**

J.K., Appellant)	
)	
and)	Docket No. 10-1945
)	Issued: June 28, 2011
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Newark, NJ, Employer)	
)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
 RICHARD J. DASCHBACH, Chief Judge
 ALEC J. KOROMILAS, Judge
 COLLEEN DUFFY KIKO, Judge

On July 21, 2010 appellant filed an application for review of a decision of the Office of Workers' Compensation Programs dated March 29, 2010. The appeal was docketed as No. 10-1945.

Appellant, a 55-year-old supervisor, sustained an injury to his right knee in the performance of duty on September 15, 2003. He filed a claim for benefits on September 22, 2003, which the Office accepted for right knee sprain/strain.

By letter dated September 4, 2008, appellant's attorney requested a schedule award based on a partial loss of use of appellant's right lower extremity. Counsel attached a June 12, 2008 report from Dr. David O. Weiss, an osteopath, who found that appellant had a 15 percent impairment of the right lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*).

By letter dated January 26, 2009, Dr. Morton Slutsky, Board-certified in plastic surgery and an Office medical adviser, reviewed Dr. Weiss' report and found that appellant had a five percent impairment of the right lower extremity pursuant to the fifth edition of the A.M.A., *Guides*. In reports dated February 12 and 25, 2009, Dr. Weiss and Dr. Slutsky reiterated their respective impairment ratings.

The Office found that there was a conflict in the medical evidence regarding the degree of impairment stemming from appellant's accepted right knee condition. It referred appellant to Dr. Robert Dennis, Board-certified in orthopedic surgery, for a referee medical examination. In an October 5, 2009 report, Dr. Dennis found that appellant had a seven percent permanent impairment of the right lower extremity rating in conformance with the updated, sixth edition of the A.M.A., *Guides*, which became effective as of May 1, 2009.¹

In a December 17, 2009 report, an Office medical adviser concurred with Dr. Dennis' seven percent impairment rating. He did not discuss or explain why he agreed with Dr. Dennis' findings and conclusions.

By decision dated January 6, 2010, the Office granted appellant a schedule award for a seven percent permanent impairment of the right lower extremity for the period January 21 to October 30, 2007, for a total of 40.32 weeks of compensation. It reviewed the medical evidence, including Dr. Dennis' impartial medical report, but did not discuss his findings or indicate why it relied on his opinion.

On January 14, 2010 appellant's attorney requested a review of the written record.

By decision dated March 29, 2010, an Office hearing representative affirmed the January 6, 2010 decision. The hearing representative stated that Dr. Dennis's seven percent impairment rating represented the weight of the medical evidence because his October 5, 2010 report contained the only impairment evaluation of record rendered in conformance with the updated sixth edition of the A.M.A., *Guides*. He did not discuss or analyze Dr. Dennis' findings or indicate whether he properly applied the relevant tables of the A.M.A., *Guides*.

Section 20 C.F.R. § 10.126 requires the Office to issue a decision containing findings of fact and a statement of reasons.² The Office erred in its January 6 and March 29, 2010 decisions by failing to support its reliance on Dr. Dennis' October 5, 2010 report by discussing or analyzing whether his findings and conclusions were proper and based on the appropriate tables and figures of the sixth edition of the A.M.A., *Guides*. The hearing representative's March 29, 2010 decision is additionally flawed because the only reason provided for relying on Dr. Dennis' opinion was that it was the only impairment rating rendered in conformance with the sixth edition of the A.M.A., *Guides*.

The Board finds that the Office failed to give proper consideration to the medical evidence of record in this case. Accordingly, the case will be set aside and remanded for consideration of the medical evidence pursuant to the standards set out in section 8128(a) and section 20 C.F.R. § 10.126. After such further development as the Office deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). As of May 1, 2009, the sixth edition will be used. FECA Bulletin No. 09-03 (issued March 15, 2008).

² 20 C.F.R. § 10.126.

IT IS HEREBY ORDERED THAT that the March 29, 2010 decision be set aside and remanded for consideration of the merits of appellant's claim.

Issued: June 28, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board