



strain, and right leg/knee sprain and paid benefits.<sup>1</sup> Appellant underwent right total hip replacement surgery on May 18, 2009. His postoperative diagnosis was avascular necrosis and right hip osteoarthritis.

On November 4, 2009 appellant requested a schedule award. In an October 13, 2009 report, Dr. Michael S. McManus, Board-certified in occupational medicine and appellant's treating physician, reviewed the history of injury and medical treatment. He advised that appellant reached maximum medical improvement on September 11, 2009. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (hereinafter A.M.A., *Guides*), appellant had 21 percent right leg impairment for a total hip replacement. Under Table 16-4, page 515, Dr. McManus found that appellant's right total hip replacement with good outcome and anatomic alignment was impairment Class 2 default Grade C which equaled 25 percent lower extremity impairment. He assessed a Grade 1 modifier for functional history given appellant's mild problem of lower limb as noted in the questionnaire under Table 16-6, page 516. Dr. McManus also assessed Grade 1 modifier for physical examination under Table 16-7, page 517, for status post arthroplasty with mild residual limitation active range of motion. For clinical studies, a Grade 2 modifier for a magnetic resonance imaging (MRI) scan consistent with avascular necrosis was assessed under Table 16-8, page 519. Dr. McManus found that the net adjustment formula was (grade modifier functional history (1) minus diagnosed condition (CDX) (2)) plus (grade modifier physical examination (1) minus CDX (2)) plus (grade modifier clinical studies (2) minus CDX (2)) equaled -2. He found that the -2 net adjustment equaled final grade modifier A. Under Table 16-4, page 515, Dr. McManus opined Class 2, Grade A impairment for total hip replacement with good outcome equaled 21 percent right leg impairment.

On October 30, 2009 an Office medical adviser reviewed the record and found that appellant reached maximum medical improvement on October 13, 2009, the date of Dr. McManus' examination. He agreed that appellant had 21 percent right upper extremity impairment due to his right hip replacement. Under Table 16-4, page 512-15, the Office medical adviser found appellant had good outcome status post left hip replacement which equaled Class 2, default Grade C or 25 percent lower extremity impairment. He agreed with Dr. McManus that appellant had Grade 1 modifier under Table 16-6, page 516 for functional history. However, the Office medical adviser assessed a grade zero modifier for physical examination as Dr. McManus' range of motion measurements were not in compliance with section 16.7, page 543, which required the rating physician to perform three measurements per joint motion and compare the greatest value for each motion with that of the opposite unaffected extremity. He further noted that no other objective abnormalities were listed by Dr. McManus.<sup>2</sup> The Office medical adviser indicated that he did not find a clinical studies grade modifier applicable as the

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<sup>1</sup> Appellant has two previous claims. Under File No. xxxxxxx616, date of injury September 30, 2002, the Office accepted lumbar conditions and authorized 2005 surgery involving a pedicle screw fixation at L3-L4 and bilateral L4-L5, L5-S1 redo foraminotomies. Appellant received a schedule award for 10 percent right leg impairment under that claim for motor and sensory deficit that affected his leg. Under File No. xxxxxx667, date of injury August 15, 2003, the Office accepted lumbosacral strain and subluxation lumbar with no time loss.

<sup>2</sup> Dr. McManus noted forward flexion 80 degrees, extension 15 degrees, abduction 30 degrees, adduction 10 degrees, external rotation 45 degrees and internal rotation 15 degrees.

February 19, 2009 magnetic resonance imaging study Dr. McManus addressed was not done at maximum medical improvement. He stated that according to section 16.3c, page 518 findings at maximum medical improvement were used for adjustment purposes. As the record reflected an August 19, 2009 x-ray at maximum medical improvement, which revealed status post right total hip arthroplasty with normal postoperative findings, this equaled a grade modifier 1 as it confirmed the diagnosis and that there were mild findings. The Office medical adviser found the net adjustment formula was (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) or (1 - 2) + (0 - 2) + (0 - 2) equaled -3 or move 2 grades to the left of Grade C, the default grade, for a final grade of A. The Office medical adviser found under Table 16-4, page 512-515, a Class 2 total hip replacement, Grade A resulted in a final impairment of 21 percent for the right lower extremity.

By decision dated November 10, 2009, the Office awarded appellant a schedule award for 11 percent right lower extremity. Appellant previously received a schedule award for 10 percent impairment under claim number xxxxxx616 for the right lower extremity. The award, equivalent to 221.76 days of compensation, ran from October 13, 2009 to May 22, 2010.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulations<sup>4</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. The Act, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of the Office.<sup>5</sup> 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 regulations as the appropriate standard for evaluating schedule losses.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>7</sup>

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

<sup>6</sup> *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

examination (GMPE) and clinical studies (GMCS).<sup>8</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>9</sup>

### ANALYSIS

Both Dr. McManus and the Office medical adviser rated 21 percent impairment of the right lower extremity. The Office medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. McManus' clinical findings. Dr. McManus' impairment rating was based on a Class II, default Grade C left hip replacement equal to 25 percent left lower extremity impairment which was adjusted by grade modifiers based on functional history (grade modifier 1), physical examination (grade modifier 1), and clinical studies (grade modifier 2).

The Office medical adviser agreed with Dr. McManus that appellant's symptoms were eligible for a functional history grade modifier 1. With regards to a physical examination grade modifier, Dr. McManus provided 1 for range of motion impairment. However section 16.3b, page 517 precludes a range of motion impairment being combined with the diagnosed-based impairment, which in this case is for the right total hip replacement. Thus, Dr. McManus' physical examination grade modifier of 1 for range of motion impairment does not comport with the A.M.A., *Guides*. The Office medical adviser properly found the physical examination grade modifier was zero as Dr. McManus found no other objective abnormalities other than loss of hip range of motion.

Dr. McManus provided a clinical studies grade modifier based on a February 19, 2009 MRI scan; however, the Office medical adviser properly noted this MRI scan was not done at maximum medical improvement. The record indicates that after appellant's MRI scan was taken in February 2009, he underwent total right hip replacement surgery May 18, 2009. Thus, appellant was not at maximum medical improvement at the time the MRI scan was taken and, under section 16.3c, page 518, this study would not be reliable and pertinent. The Office medical adviser properly found the August 19, 2009 x-ray, which revealed normal postoperative findings status post right total hip arthroplasty, confirmed both the diagnosis and appellant's mild findings. Under Table 16-8, page 519, the Office medical adviser properly found this resulted in a clinical studies grade modifier of zero.

Applying the Office medical adviser's findings, the net adjustment formula for this case is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) or  $(1 - 2) + (0 - 2) + (0 - 2)$  or  $-5$ ,<sup>10</sup> which moves the default Grade C to the left two grades for a final grade of A. Under Table 16-4, page 515, a Class 2 total hip replacement, Grade A results in a final impairment of 21 percent for the right lower extremity.

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<sup>8</sup> A.M.A., *Guides* 494-531.

<sup>9</sup> *Id.* at 521.

<sup>10</sup> The Office medical adviser incorrectly found the net adjustment was -3. This error, however, is harmless as the net adjustment can move no more than two grades to the left of Grade C, for a final Grade A. *See id.* at 521.

On appeal, appellant noted that he previously received 10 percent schedule award for impairment due to his accepted back condition. He contends that since his right hip total replacement equaled 21 percent impairment, he should have the full award. As noted, appellant previously received a schedule award for 10 percent impairment of his right leg under case number xxxxxx616. The Office, however, did not consider whether appellant's 21 percent impairment due to his right hip total replacement duplicated the compensation previously paid for impairment due to his back under claim number xxxxx667 or whether it should be combined with the prior award.<sup>11</sup> As the Office did not adequately explain why appellant's 21 percent impairment due to his right hip total replacement duplicated the compensation he previously received under claim number xxxxxx616, the Board finds that the case is not in posture for decision with regard to this aspect of the claim.<sup>12</sup> The case will be remanded to the Office to obtain clarification from the Office medical adviser regarding the extent of appellant's right lower extremity impairment.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>11</sup> See 20 C.F.R. § 10.404(c)(1), (2). Benefits payable under 5 U.S.C. § 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.

<sup>12</sup> T.S., 61 ECAB \_\_\_\_ (Docket No. 09-1308, issued December 22, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 10, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: December 22, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board