

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH F. BARR and DEPARTMENT OF AGRICULTURE,
MEAT POUTRY INSPECTION SERVICE, Des Moines, IA

*Docket No. 97-415; Submitted on the Record;
Issued August 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established a greater than 50 percent permanent impairment of his right lower extremity for which he received a schedule award.

The Board has duly reviewed the case record and concludes that the evidence of record establishes that appellant has a 75 percent impairment of the right lower extremity.

Section 8107 of the Federal Employees' Compensation Act¹ provides that, if there is a permanent disability involving the loss or loss of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for evaluating schedule losses and the Board has concurred in such adoption.

In the present case, the Office has accepted that appellant has sustained right hip strain, loosening of right total hip replacement and right hip arthroplasty due to an injury incurred on May 19, 1993. On January 11, 1995 the Office issued appellant a schedule award for 50 percent permanent partial impairment of the right lower extremity. Appellant requested a hearing and the Office hearings representative issued a decision finding that appellant did not have more than a 50 percent impairment of his right lower extremity. Appellant requested reconsideration and the Office issued a merit decision on October 31, 1995 denying his request for modification of his schedule award for his right lower extremity. Appellant again requested reconsideration and the Office issued a nonmerit decision on July 25, 1996 denying appellant's request for reconsideration.

¹ 5 U.S.C. §§ 8101-8193, 8107.

The Office referred appellant to Dr. John E. McMahon, a Board-certified orthopedic surgeon, for an impairment rating for appellant's right and left legs. By medical report dated September 15, 1994, Dr. McMahon stated:

"Regarding Factors to be Calculated

"A. It should be noted that he does not have range of motion of either hip because both hips have significant disability. The patient has pain upon weight bearing primarily in his left thigh, obviously any increased activity increases his pain. He requires external assistance.

"B. Range of motion of the affected hip vs. the opposite hip:

1. Flexion 110 degrees;
2. Extension 5 to 10 degrees;
3. Adduction 10 degrees;
4. Abduction 10 degrees;
5. Internal rotation 10 degrees;
6. External rotation 20 degrees.

"C. The patient has weakness of both lower extremities, particularly of the abductors, flexors and quadriceps mechanism. They are considered grade 3 and 4. Which would equate to 50 to 70 percent of normal."

* * *

"A. The patient has had multiple surgical procedures involving his right hip. In the form of a total hip arthroplasty, revision total hip arthroplasty, loose prosthesis infection. He has undergone a resection of the hip and more recently has undergone a reimplantation and continues to be controlled on antibiotics. He has less pain when compared to the left, but he does have considerable weakness and restriction of motion.

"B. Range of motion:

1. 100 degrees of flexion;
2. 0 to 5 degrees of extension;
3. 15 degrees abduction;
4. 15 degrees adduction;

5. 5 degrees internal rotation;
6. 20 degrees external rotation.

“C. The patient has considerable weakness due to scarring from repeated procedures and disuse. He has at least 70 percent loss of hip abductor and flexor strength.”

Dr. McMahon commented as follows regarding appellant’s right hip and right lower extremity:

“The patient has undergone multiple procedures involving his right hip, initially for osteoarthritis, then loosening in his prosthesis and more recently for deep wound infection which require excision of his entire hip with soft tissue etc., extensive therapy with antibiotics and he subsequently had a reimplantation. He has a minimum of 75 percent loss of his function of his right lower extremity secondary to his hip pathology mentioned above.”

The Office referred Dr. McMahon’s September 15, 1994 report to an Office medical adviser to calculate appellant’s lower extremity impairment. In a medical report dated November 1, 1994, the Office medical adviser reported the following:

“[Appellant] is a food inspector for the [employing establishment].

“Regarding [appellant’s] left lower extremity, Dr. McMahon writes in his letter of September 15, 1994 that the patient is experiencing some symptoms of loosening of the prosthesis. He does not make mention of any weight loss in the patient. The ROM’s [range of motions] listed in the letter, in addition to the weakness, ambulation and pain were reviewed and compared to previous reports. The permanent partial impairment of hip replacement of the previous A.M.A., *Guides* is no longer available, the A.M.A., *Guide[s] to [the Evaluation of] Permanent Impairment* (fourth edition) uses Table 65, page 87 and Table 64, page 85 with a finding of 50 percent permanent ... impairment compared to the ROM model using Table 40 page 78, Flexion 0 percent, ext[ension] 5 percent, int[ernal] rot[ation] 5 percent, ext[ernal] rotation 5 percent, abd[uction] 10 percent and add[uction] 5 percent [to] equal 30 percent; Table 38 to 39, page 77, grade 3, 10 percent flex[ion]; Combined Values Chart, page 322, 30 percent plus 10 percent equals 40 percent.

“As you can tell both of the ABOVE ARE LESS THAN THE PREVIOUS AWARDS so no additional is given. Regarding the right hip Dr. McMahon lists the surgical procedures performed and the final results. (Emphasis in the original.)

“Dr. McMahon’s letter of June 9, 1993 indicates his hip replacement was loosened with a twisting injury. He subsequently developed a secondary infection and a reimplantation. His residual impairments using the A.M.A., *Guide[s]*, ...

fourth edition, Table 64, page 85 and [Table] 65, page 87 fair result 50 percent this is compared to the usage of the ROM model which is less therefore the former is accepted as the PERMANENT PARTIAL IMPAIRMENT for the right lower extremity. (Emphasis in the original.)

“Summary: 50 percent PERMANENT PARTIAL IMPAIRMENT for the RLE [right lower extremity]. (Emphasis in the original.)

“LLE [left lower extremity] no additional award is given.”

In an award of compensation dated January 11, 1995, appellant was awarded 50 percent permanent impairment of the right lower extremity.

Appellant requested a written review of the record. In a decision dated June 15, 1995, the hearing representative affirmed the Office’s January 11, 1995 decision.

Appellant requested reconsideration and submitted an August 9, 1995 report by Dr. McMahon who stated:

“Reference is made to Table 64 on page 85, also Ta[b]le 65 on page 87. The patient, as indicated with previous correspondence, has significant impairment of the right lower extremity due to multiple surgeries including complications thereof. Based on the references above, his hip score is 44. This is based on having moderate pain with moderate limp, requiring supportive device and limited to three blocks of ambulation.

“In addition, his activities are limited in that he cannot climb stairs readily. He puts shoes and socks with difficulty. He is uncomfortable sitting and he is unable to use public transportation because of the step. He does not exhibit deformity. However, he does have limitation of motion. He does have 100 degrees of flexion, but he has less than optimum motion on abduction, adduction, external rotation and internal rotation.”

In a letter dated August 11, 1995, appellant again requested reconsideration and submitted a new medical report by Dr. McMahon. The Office again denied modification of its January 19, 1995 decision in a decision dated October 31, 1995.

On April 22, 1996 appellant again requested reconsideration and submitted a comprehensive medical report dated April 11, 1996 by Dr. McMahon. Therein, he stated:

“This is a report in regard to [appellant], it is my opinion as to the status of his right hip which he injured in an industrial accident and subsequently had a total hip arthroplasty. However, this subsequently failed secondary to a twisting injury in 1993, and therefore required revision arthroplasty. His hip subsequently became infected which necessitated a third procedure to remove the prosthesis and to be treated with antibiotic methymethacolate beads and IV antibiotics to prevent osteomyelitis. After a month’s course of IV antibiotics he was

subsequently prepared to return to surgery where again the hip was debrided and a revision total hip arthroplasty was performed. His infection was under control. He was treated extensively and he continues to function with the present prosthesis, S-ROM type.

"He was recently seen, March 13, 1996, for evaluation of his hips. He states that he continues to have difficulty with his hips with weakness, pain, inability to function independently. In addition, he states that the hypesthesia, peripheral symptoms involving his left lower extremity had recurred. He is at a minimal function level at that point. He required the use of crutches, cannot go up and down stairs, had a difficult time getting into his automobile, having to lift each leg to get into an automobile. He is limited in distance because of the amount of effort that is required to walk and pain secondary to weak lower extremities.

"His situation has been complicated due to a recent heart attack and genitourinary problem which did require surgery. New x-rays were not obtained. The last x-rays reveal S-ROM system on the right and a customized prosthesis on the left.

"Physical examination reveals that he is unable to walk independently. He requires the use of two crutches for ambulation. He has a strongly positive Trendelenburg on the right, mild to moderate on the left. Examination of the right hip reveals atrophy of the thigh, well-healed scar tissue. Active range of motion: forward flexion is 15 to 20 degrees, extension is 0, abduction 0 to 5, adduction 15, internal rotation 0 to 5, external rotation 25. Passive motion: flexion 90 degrees, extension 0, abduction 10 to 15 degrees, adduction 15 degrees, internal rotation limited to 5 degrees, external rotation 25 degrees."

Dr. McMahon went on to explain the means by which he calculated a 75 percent impairment rating. He stated:

"[Appellant] has severe functional disability of both lower extremities due to weakness necessitating full-time external assistance for ambulation of a very short distance not exceeding 600 feet. His limitation of motion has actually increased, this is particularly demonstrated on his active range of motion which requires his own muscle ability to move his hip. This weakness, severe functional limitation of motion, requiring bilateral external assistance and having pain and also hypesthesia (on his left side).

"According to the American Medical Association, *Guides to [the] Evaluation of Permanent [Impairment]* for evaluation of [appellant's] disability. A reference point is Table 64, page 85, under hip category, [appellant] has a 75 percent permanent disability of his right lower extremity.

"In reference to obtaining this percentage was based using Table 65, page 87 of the same reference:

Category A, pain, moderate pain 20 points;

Category B, function, limp severe, support, 2 canes 0 points, distance walked, A 2 points;

Category C, activities, stair climbing, unable to climb 0 points, putting on shoes and socks, can do with difficulty 2 points, sitting, high chair only, 2 points, public transportation, able to use 0 points;

Category D, deformity, due to absence of fixed deformity and leg length discrepancy he has 5 points;

Category E, range of motion, flexion 1 point, abduction 0, adduction 1 point, internal rotation 0, external rotation 0.

"The total points to the result of his hip replacement is 33 points. In reference to Table 64 this is equivalent to a poor result (being less than 50 points) and therefore is 75 percent PPD [permanent partial disability]."

In a decision dated July 25, 1996, a claims examiner denied the request for reconsideration stating:

"In this report, Dr. McMahon provides ranges of motion and a description of the claimant's physical limitation. He opines the claimant has a 75 percent permanent ... impairment of the right leg. However, this information was previously reviewed by the Office [m]edical [a]dvis[e]r in a report dated November 1, 1994. At that time, medical evidence supported only 50 percent permanent ... impairment based on the Office [m]edical [a]dvis[e]r's review of this data. There is no indication the data has changed. There is no change in the physician's estimate of impairment. Evidence is, therefore, essentially cumulative."

The claims examiner did not refer the April 11, 1996 report to an Office medical adviser.

The Board has carefully reviewed the total evidence of record, including the only medical adviser's review of the September 15, 1994 report of Dr. McMahon.

From a review of the A.M.A., *Guides*, according to Table 65 at page 87, appellant gets 20 points for moderate pain, under function, he gets 0 points for a severe limp, 2 points for a supportive device (2 crutches)² 0 points for walking in doors only, under activities, he gets 0 points for being unable to climb stairs, 2 points for putting on shoes and socks with difficulty, 2 points for sitting in a high chair only and 0 points for unable to use public transportation; under range of motion, appellant gets 1 point for flexion and 1 point for abduction, 0 points for abduction, 0 points for adduction and for external rotation and 0 points for internal rotation. Dr. McMahon indicated there was an absence of fixed deformity and leg length discrepancy so

² Dr. McMahon, in his narrative, reported that appellant used two *crutches* that would equate to zero points under the A.M.A., *Guides*. However, in his summary, he awarded appellant 2 points for the use of *canes* for a total of 33 points. In fact, Dr. McMahon's numbers equal 35 points. (Emphasis added.)

appellant would get 5 points. The total equals 30 points (under 50 points is a poor result) which indicates an impairment rating of 75 percent according to Table 64 at page 85 and an increase in impairment over Dr. McMahon's September 15, 1994 report.

Dr. McMahon has clearly indicated how he arrived at a point total under 50 which equals a poor result and a 75 percent impairment according to Table 64 at page 85. The Office medical adviser failed to explain her point total of 50 to 84 points resulting in a finding of fair and a 50 percent impairment using Dr. McMahon's September 15, 1994 report and was denied the opportunity to even view the April 11, 1996 updated report. The weight of the medical evidence of record is the April 11, 1996 report of Dr. McMahon.

The Board therefore finds the opinion of Dr. McMahon to be probative, rationalized, consistent with the A.M.A., *Guides*, and supports a finding of 75 percent impairment of the right lower extremity.

The decisions of the Office of Workers' Compensation Programs dated July 25, 1996 and October 31, 1995 are modified to reflect that appellant has a 75 percent impairment of the right lower extremity and is affirmed as modified.

Dated, Washington, D.C.
August 20, 1999

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member