

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARVEY H. FLINCHUM and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, PA

*Docket No. 97-1887; Submitted on the Record;
Issued September 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained any permanent impairment of the right hip causally related to his 1983 employment injury which entitles him to receive a schedule award.

This is the third appeal in this case. By decision dated March 28, 1990,¹ the Board affirmed the Office of Workers' Compensation Program's decision dated October 24, 1989 in which the Office determined that appellant's 1983 temporary aggravation of a right hip condition had resolved as of May 1, 1984. By decision dated May 28, 1987,² the Board found that a conflict in the medical opinion evidence existed between appellant's treating physician and an Office medical consultant and the case was remanded for resolution of the conflict by an impartial medical specialist. The facts of this case are more fully set forth in the Board's previous decisions and are herein incorporated by reference.

On May 16, 1995 appellant filed a claim for a schedule award. Attached to the claim form were the statements of Dr. Stanley H. Bushkoff, a Board-certified orthopedic surgeon, who related that appellant was last examined on May 3, 1995 for his yearly checkup of his right hip. He stated that appellant had reached maximum medical improvement and had a 20 percent impairment of the lower extremity according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

By decision dated April 9, 1996, the Office denied appellant's claim for a schedule award for permanent impairment of the right hip as the weight of the medical evidence established that appellant had sustained only a temporary work-related aggravation of his preexisting right hip condition and that the temporary aggravation ceased in May 1984. The Office stated that

¹ Docket No. 90-362.

² Docket No. 87-727.

appellant's continuing right hip problems were due to the nonwork-related preexisting hip condition.

By letter dated April 29, 1996, appellant requested an oral hearing before an Office hearing representative.

On January 29, 1997 a hearing was held before an Office hearing representative at which time appellant testified.

After the hearing was held, appellant submitted a report dated February 5, 1997 in which Dr. Bushkoff related that appellant was involved in a motorcycle accident in August 1980 and sustained a fracture of the right femur. He related that in 1983 appellant underwent a total hip replacement of the right hip, had to have the hip revised in 1984 and did well until January 1996 when he slipped and injured his right hip while working. Dr. Bushkoff stated:

“Essentially, [appellant] suffered an accident in 1980 with a total hip replacement in 1984³ on the right and a revision of the hip prosthesis in 1994. In my opinion, the necessity of the total hip replacement was secondary to the avascular femur head which was secondary to the fractured right hip. The 20 [percent] impairment according to the [A.M.A., *Guides*] is related to the condition of total right hip replacement. The work-related aggravation to his hip occurred during the period when he was a mail carrier for the [employing establishment] between the beginning of his employment on September 4, 1982 and surgery in January 1984.

“The injury sustained in January 1996 in late February/early March also aggravated [appellants] total right hip replacement....

“My opinion has not changed with regard to the impairment. One last look at the [A.M.A., *Guides*] is 20 [percent] impairment but we can always check that figure.”

By decision dated April 14, 1997, the Office hearing representative affirmed the Office's April 9, 1996 decision and noted that the Board had held in its March 28, 1990 decision that the weight of the medical evidence established that appellant's 1983 employment injury caused a temporary aggravation which ceased as of May 1, 1984. He stated that appellant could not be entitled to a schedule award because such an award was based upon permanent impairment, not a temporary aggravation.

The Board finds that appellant has not met his burden of proof to establish that he sustained a permanent impairment to his right hip which entitles him to receive a schedule award.

Section 8107 of the Federal Employees' Compensation Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the

³ In a letter dated March 4, 1997, Dr. Bushkoff corrected the year from 1983 to 1984.

claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Under section 10.304 of the implementing federal regulations,⁵ schedule awards are payable for permanent impairment of specified bodily members, functions or organs.

In this case, the Board determined, in its March 28, 1990 decision, that the weight of the medical evidence of record established that appellant sustained a 1983 work-related temporary aggravation of a right hip condition which resolved as of May 1, 1984. In 1995 appellant filed a claim for a schedule award for permanent impairment of the right lower extremity. He submitted medical reports from Dr. Bushkoff who indicated his opinion as to appellant's percentage of permanent impairment.⁶ However, as noted above, the Act provides for a schedule award only for permanent impairment, not a temporary aggravation. Since appellant's work-related aggravation of his hip condition had resolved as of May 1, 1984 and he therefore had no work-related permanent impairment of the right hip, he is not entitled to receive a schedule award.

The April 14, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
September 14, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ 5 U.S.C. § 8107(a).

⁵ 20 C.F.R. § 10.304.

⁶ The Board notes that in his February 5, 1997 report, Dr. Bushkoff attributed appellant's impairment, in part, to a 1996 slip and fall at work. However, the record shows that the Office has not accepted any 1996 injury as employment related.