

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD B. CHERMAK and DEPARTMENT OF JUSTICE,  
U.S. PENITENTIARY, Lompoc, CA

*Docket No. 02-1474; Submitted on the Record;  
Issued September 25, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than a 32 percent permanent impairment to his left leg for which he received a schedule award.

The Board has duly reviewed the case record and finds that appellant is not entitled to more than a 32 percent impairment for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</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. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001), has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>3</sup>

The Office of Workers' Compensation Programs accepted appellant's claim for a femoral neck fracture. Appellant underwent hip surgery on December 12, 1998 and August 20, 1999. In a report dated January 18, 2000, appellant's treating physician, Dr. John C. Trettin, a Board-certified orthopedic surgeon, found that on physical examination of appellant's left hip, appellant had flexion of 95 degrees, extension of 10 degrees, external rotation of 40 degrees, and internal rotation of 15 degrees. He did not provide any impairment rating for appellant's hip.

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<sup>1</sup> 5 U.S.C. § 8107 *et seq.*

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

In a report dated February 11, 2002, an Office medical consultant, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, reviewed the figures Dr. Trettin provided for determining appellant's range of motion. Applying the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), Dr. Harris determined that appellant had a 5 percent impairment of loss of hip motion, Table 17-9, p. 537, a 25 percent impairment for weakness of hip abduction, Table 17-8, p. 532, and a Grade 3/pain decreased sensation that interfered with some activity, Table 16-10 (60 percent), p. 482 of the femoral nerve/quadriceps muscle, Table 17-37(7), p. 552, resulting in a 4 percent impairment for pain which interfered with some activity. Dr. Harris used the Combined Values Chart to determine that the impairments' combined value of 5 percent for loss of motion, 25 percent for weakness of hip abduction and 4 percent for pain which interfered with function resulted in a 32 percent impairment to the left lower extremity. Dr. Harris's impairment rating of 32 percent to the left lower extremity is based on the medical evidence of record and in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). Appellant has not presented evidence showing that he is entitled to more than a 32 percent impairment to his left hip.

The March 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
September 25, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member