

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. PENNY and U.S. POSTAL SERVICE,
POST OFFICE, Traverse City, MI

*Docket No. 02-2052; Submitted on the Record;
Issued March 6, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 37 percent permanent impairment of her right leg, for which she received a schedule award.

On March 6, 2000 appellant, then a 58-year-old rural mail carrier, filed a claim asserting that the severe osteoarthritis in her right hip was a result of her federal employment. The Office of Workers' Compensation Programs accepted her claim for aggravation of right hip degenerative joint disease (osteoarthritis of pelvis) and authorized a total hip replacement. Appellant underwent a right cementless total hip arthroplasty on November 13, 2000.

On February 1, 2001 appellant advised the Office that she had reached maximum medical improvement and requested information about a schedule award. The Office informed appellant what information her physician needed to provide to assess her impairment.¹

On February 27, 2001 Dr. Joseph W. McGraw, appellant's orthopedic surgeon, reported as follows:

“As you know [appellant] has had severe degenerative arthritis of her right hip, which was treated with hip replacement on November 13, 2000. She has experienced a full recovery from her hip replacement. [Appellant] has had excellent relief of her pain and dramatic improvement in her function.

“Based on the [American Medical Association], *Guides [to] the Evaluation of Permanent Impairment* she has very little impairment as she has nearly a full range of motion with just slight limitation of flexion, abduction, adduction,

¹ The Office requested a full description of objective findings, including decreases in strength, atrophy of muscles, changes in sensation and loss of motion. The Office requested a complete description of subjective factors causing further impairment, such as fatigue, discomfort, pain, instability or weakness. The Office also requested information on any continuous or intermittent use of a prosthesis or orthotic device.

internal and external rotation. However, because she is at risk for early failure of her prosthesis with osteolysis, loosening and wear she has been placed on permanent restrictions for a sedentary position with a sit/stand option, no lifting, no repetitive bending, twisting, s[t]looping, kneeling or stair climbing.

“Under the position offered of distribution clerk, under the list of functional requirements I would classify her restrictions as #3 light lifting under 15 pounds and #6 light carrying under 15 pounds. The remainder of the circled items should not be [a] problem for her.

“Again while the total hip replacement has restored excellent function for her she remains at risk for long-term problems if she is to resume an active employment and active lifestyle. I would strongly suggest that you consider this in both her return to work and also in consideration of her disability case.”

On June 8, 2001 an Office medical adviser reviewed Dr. McGraw’s February 27, 2001 report and determined that appellant had 90 points from Table 17-34, page 548, of the A.M.A., *Guides* (5th ed. 2001). The Office medical adviser then compared the points to Table 17-33, page 546 and reported that appellant had a 37 percent permanent impairment of her right leg.

On September 7, 2001 the Office issued a schedule award for a 37 percent permanent impairment of the right leg, entitling appellant to 106.56 weeks of compensation for permanent physical impairment caused by her employment injury.

Appellant disagreed with the Office’s assessment and the amount of the award. In a letter postmarked February 20, 2002, she appealed to the Branch of Hearings and Review.

In a decision dated June 18, 2002, the Branch of Hearings and Review denied appellant’s request for a review of the written record. The Branch of Hearings and Review found that appellant did not make her request within 30 days of the Office’s decision and that she could equally well address the issue in her case by requesting reconsideration and submitting new evidence establishing a greater percentage of permanent impairment.

The Board finds that this case is not in posture for decision. Further development of the medical evidence is required.

Section 8107 of the Federal Employees’ Compensation Act² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.³

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

The A.M.A., *Guides* provides as follows:

“Some impairment estimates are assigned more appropriately on the basis of a diagnosis than on the basis of findings on physical examination. A good example is that of an individual impaired because of a successful replacement of a hip. This person may function well but require prophylactic restrictions of activities of daily living to prevent a further impairment, such as premature failure of the prosthesis. Table 17-33 provides impairment estimates for certain lower extremity impairments. For most diagnosis-based estimates, the ranges of impairment are broad and the estimate will depend on the clinical manifestations and their impact on the ability to perform activities of daily living. Hip replacements should first be rated using Table 17-34 and knee replacements using Table 17-35. The points obtained from the assessment are the[n] applied to Table 17-33 for the diagnosis impairment rating. If limb length discrepancy also exists, that impairment rating should be combined with the impairment from the joint replacement using the Combined Values Chart (page 604).”⁴

Table 17-34, page 548, assigns points for findings in five categories: Pain, function, activities, deformity and range of motion. Pain, for example, ranges from 44 points for no pain to 10 points for marked pain. The fewer the points, the greater the impairment. Function is divided into limp, supportive device and distance walked. Activities include climbing stairs, putting on shoes and socks, sitting and public transportation. Deformity and range of motion are both divided into five subcategories. The points from each category are added to determine the total and to characterize the result of the replacement.

Appellant’s orthopedic surgeon, Dr. McGraw, reported insufficient clinical findings to allow a proper assessment of points under Table 17-34. He reported “excellent relief” of pain but did not make clear whether appellant had no pain at all or slight pain. Dr. McGraw reported “dramatic improvement” in function but did not address the extent of any limp, the type of any supportive device or the distance appellant could walk. Dr. McGraw reported “just slight limitation” of flexion, abduction, adduction, external rotation and internal rotation, but he offered no goniometric readings required for the proper assignment of points. His description of permanent restrictions leaves additional questions unanswered as to appellant’s ability to perform the activities of daily living specified in Table 17-34.

The Office medical adviser reported that appellant had 90 points under Table 17-34, but he did not explain where these points came from or what clinical findings supported them. A total of 90 points describes “Good results” under Table 17-33, page 546 and a 37 percent impairment of the lower extremity, which the Office awarded. Six fewer points, however, describes “Fair results” from the hip replacement and would entitle appellant to a schedule award for a 50 percent impairment.

A fair assessment of points and a proper determination of appellant’s impairment require that Dr. McGraw describe the hip replacement results in every category under Table 17-34. As the medical evidence does not allow a proper determination of impairment, the Board will set

⁴ A.M.A., *Guides* at 545 (5th ed. 2001).

aside the Office's September 7, 2001 decision and remand the case for further development of the evidence.⁵ After such further development as may be necessary, the Office will issue an appropriate final decision on appellant's entitlement to compensation for permanent impairment.⁶

The September 7, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.⁷

Dated, Washington, DC
March 6, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.a (March 1995) (the claims examiner should review the findings of the Office medical adviser and, if the claims examiner believes that the impairment has not been correctly described or that the percentage is not reasonable, a new or supplemental evaluation should be obtained).

⁶ Appellant disagrees with the length of the schedule award she received in part because it forced her to stop work before she reached the age of 65, affecting her retirement status and depriving her of 6 years of wages. Schedule awards are not meant to compensate employees for wage loss; they compensate only for the permanent physical impairment of a covered member, function or organ of the body caused by the employment injury. The most an employee can receive for leg impairment is 288 weeks of compensation for the total loss or amputation of the leg. 5 U.S.C. § 8107(c)(2). Partial loss is compensated proportionally, such that compensation for an impairment of 37 percent is 37 percent of 288, or 106.56 weeks of compensation, which the Office paid in this case. *Id.* § 8107(c)(19). Appellant may be entitled to continuing compensation for wage loss after her schedule award expires.

⁷ The Board's disposition of the schedule award issue renders the Branch of Hearings and Review's June 18, 2002 decision moot.