

January 3, 2002, the Office reduced his compensation benefits to zero, on the grounds that he had no loss of wage-earning capacity.

Appellant filed a claim for compensation requesting a schedule award on February 25, 2002. In a letter dated March 5, 2002, the Office requested that his physician provide a detailed report listing his permanent impairments due to his accepted employment injuries. Appellant did not respond and the Office referred him for a second opinion evaluation. In a report dated May 22, 2002, Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, opined that appellant had a 10 percent impairment of his left lower extremity due to loss of range of motion. By decision dated July 25, 2002, the Office granted him a schedule award for a 10 percent permanent impairment of his left lower extremity.

Appellant, through his attorney, requested reconsideration on June 18, 2003 based on the June 17, 2002 report of Dr. Kevin L. Trangle, a Board-certified internist, who found that appellant had a 77 percent impairment of his left lower extremity. By decision dated September 3, 2003, the Office reviewed appellant's claim on the merits and denied modification of its prior decision on the grounds that the Dr. Trangle improperly applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, to his medical conditions and that Dr. Kaffen's reports constituted the weight of the medical opinion evidence.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

ANALYSIS

Appellant requested a schedule award based on permanent impairment due to his accepted employment injuries. Appellant did not submit any medical evidence in support of his request and the Office referred him to Dr. Kaffen to determine the extent of his permanent impairment. In his report dated May 22, 2002, he noted appellant's history of injury and employment injuries. Dr. Kaffen noted that the March 5, 1999 surgical report listed findings of a tear of the posterior capsule of the left hip with an injury to the labrum. On physical examination Dr. Kaffen found that appellant had no motor or sensory deficit in the lower extremities. He found that appellant's range of motion of the left hip was 10 degree flexion contracture with further flexion to 80 degrees with pain, a moderate 10 percent impairment; external rotation to 20

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

degrees with pain, internal rotation to 10 degrees; and abduction to 30 degrees.³ Dr. Kaffen noted that appellant's left thigh measured 20 inches in circumference with the right thigh measuring 21 inches. He found that appellant had no shortening of the left lower extremity, but that he exhibited an antalgic limp. Dr. Kaffen concluded that he had no involvement of the lower extremities due to his lumbar spine condition. He also determined that, based on the A.M.A., *Guides*, appellant had moderate impairment due to abnormal motion for a 10 percent impairment of the left lower extremity. In his June 5, 2002 supplemental report, Dr. Kaffen stated that appellant reached maximum medical improvement in April 2000. The district medical adviser reviewed Dr. Kaffen's report on June 19, 2002 and concurred that appellant had a 10 percent permanent impairment of his left lower extremity based on the A.M.A., *Guides*.⁴

Based on Dr. Kaffen's range of motion figures and applying the A.M.A., *Guides* a 10 degree flexion contracture with further flexion to 80 degrees with pain, is a moderate 10 percent impairment; external rotation to 20 degrees with pain, is a mild 5 percent impairment; internal rotation to 10 degrees, is a mild 5 percent impairment; and abduction to 30 degrees, is not a ratable impairment.⁵ Therefore, based on Dr. Kaffen's report, appellant has 20 percent impairment of his left lower extremity due to loss of range of motion.

Appellant submitted two reports from Dr. Trangle dated June 17, 2002. In one report, Dr. Trangle provided impairments in terms of the whole person for both appellant's back and left hip. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.⁶ Furthermore, the Act does not provide for impairments to the whole person, but rather to the individual scheduled members and appellant is not entitled to a whole person impairment rating.⁷

In a separate report dated June 17, 2002, Dr. Trangle noted appellant's history of injury and provided his findings on physical examination including left hip flexion of 52 degrees, a moderate 10 percent impairment; extension to 8 degrees, no impairment; abduction to 26 degrees, no impairment; adduction to 6 degrees, a mild 5 percent impairment; internal rotation to 12 degrees, a mild 5 percent impairment; and external rotation to 30 degrees, a mild 5 percent impairment for a total of 25 percent impairment of the left hip due to loss of range of motion.⁸ Dr. Trangle further found that appellant had significant weakness on the left side for his hip flexors and extensors as well as abductors as well as atrophy with the left thigh measuring 51 centimeters and the right thigh measuring 55. Appellant's left calf was 42 centimeters on the left and 43½ on the right. Dr. Trangle also noted his antalgic gait.

³ A.M.A., *Guides*, 537, Table 17-9.

⁴ *Id.*

⁵ A.M.A., *Guides*, 537, Table 17-9.

⁶ *George E. Williams*, 44 ECAB 530, 533 (1993).

⁷ *Phyllis F. Cundiff*, 52 ECAB 439, 440 (2001).

⁸ A.M.A., *Guides*, 537, Table 17-9.

In evaluating appellant's impairment under the A.M.A., *Guides*, Dr. Trangle found that appellant had undergone a hip replacement and evaluated his findings accordingly reaching a 75 percent lower extremity impairment rating due to that.⁹ He further found that appellant had left hip arthropathy and a seven percent impairment based on x-rays.¹⁰ He concluded that combining these values, appellant had a 77 percent impairment of his left lower extremity.

The district medical adviser reviewed Dr. Trangle's report on July 28, 2003. He stated that appellant did not have a total hip replacement and that Dr. Trangle's ratings were inapplicable and inappropriate. However, the district medical adviser stated: "My opinion is that, since there is a controversy regarding the ratings from two physicians, I suggest a third rating to be made by a third physician as referee to resolve this discrepancy."¹¹

The medical evidence currently in the record suggests that appellant has a permanent impairment of the lower extremity of at least 20 percent due to loss of range of motion based on Dr. Kaffen's May 22, 2002 report. Furthermore, Dr. Trangle's June 17, 2002 report suggests that appellant has permanent impairment of 25 percent due to loss of range of motion in addition to impairments due to pain, loss of strength, change of gait and arthritis.¹² Due to the variant range of motion figures and final impairment ratings between Drs. Kaffen, the second opinion physician and a Board-certified orthopedic surgeon, and Dr. Trangle, appellant's physician and a Board-certified internist, there is an unresolved conflict of the medical opinion evidence regarding the extent of appellant's permanent impairment to his left lower extremity. Section 8123(a) of the Act,¹³ provides: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

On remand the Office should prepare a statement of accepted facts and a list of specific questions and refer appellant to an appropriate Board-certified physician to determine the extent of his permanent impairment as a result of his accepted employment injuries. After this and any such other development as the Office deems necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for a decision, due to an unresolved conflict of medical opinion evidence regarding the extent of appellant's permanent impairment due to his accepted employment-related injuries.

⁹ A.M.A., *Guides*, 526, Table 17-2; 546, Table 17-33; 548, Table 17-34.

¹⁰ A.M.A., *Guides*, 544, Table 17-31.

¹¹ *Janet L. Adamson*, 52 ECAB 431, 434 (2001).

¹² The A.M.A., *Guides* provide that impairments for loss of range of motion may not be combined with gait derangement, muscle atrophy, muscle strength, or arthritis; however, a peripheral nerve injury may be combined with a loss of range of motion. A.M.A., *Guides*, 526, Table 17-2.

¹³ 5 U.S.C. §§ 8101-8193, 8123(a).

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2003 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this opinion of the Board.

Issued: February 10, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member