

on January 9, 1996. In a report dated May 28, 1996, Dr. Mark Parker, a rehabilitation specialist, provided results on examination and diagnosed thoracolumbar sprain and right heel spur. Dr. Parker indicated that appellant continued to work light duty.

On April 15, 2003 the Office received a claim for compensation (Form CA-7) for a schedule award. In a report dated April 28, 2003, Dr. Parker indicated that there was no impairment of the right foot for plantar fasciitis or heel spur; he noted range of motion for dorsiflexion was 65 degrees.¹ Dr. Parker noted impairments for carpal tunnel syndrome and the lumbar spine.

In a report dated March 2, 2004, Dr. Ronnie Shade, a Board-certified orthopedic surgeon, provided results on examination and reported range of motion for the left hip: flexion 110 degrees, abduction 20 degrees, adduction 25 degrees, internal rotation 15 degrees and external rotation 40 degrees. For the right ankle, Dr. Shade reported 30 degrees of plantar flexion and 20 degrees of dorsiflexion, inversion and eversion. Dr. Shade opined that appellant had a 10 percent impairment to the left leg due to loss of abduction and internal rotation motion. He reported the date of maximum medical improvement as February 24, 2004.

In a report dated May 5, 2004, an Office medical adviser noted that Dr. Shade did not provide a complete history and did not indicate that the range of motion reported was measured using a goniometer. The medical adviser recommended referral for a second opinion evaluation.

The Office referred appellant to Dr. John Sklar, a physical medicine and rehabilitation specialist. In a report dated June 4, 2004, Dr. Sklar provided a history and results on examination. Dr. Sklar stated that range of motion for the hip and foot were equal bilaterally, but did not provide actual range of motion results. With respect to a permanent impairment, Dr. Sklar stated that there was no evidence of lower extremity radiculopathy, that appellant had good strength in the legs, and hip and foot range of motion were within functional limits. Dr. Sklar opined that appellant could be rated for pain, as she had moderate pain in the left leg and the rating for pain was from one to three percent. According to Dr. Sklar, appellant had a two percent impairment to the left leg for moderate pain and one percent for the right leg due to mild pain. He also opined that the date of maximum medical improvement was May 28, 1996, when she was examined by Dr. Parker.

In a report dated June 16, 2004, an Office medical adviser stated that, although Dr. Sklar did not identify Chapter 18 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), it was clear that the physician applied Chapter 18 and the ratings were acceptable.

By decision dated June 29, 2004, the Office issued schedule awards for a two percent impairment to the left leg and one percent for the right leg. The awards ran for 8.64 weeks from May 28, 1996.

¹ Dr. Parker referred to the left foot in his opinion on permanent impairment, but based on his discussion of the injury it appeared that he intended to refer to the right foot.

LEGAL PRECEDENT

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 claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² 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 A.M.A., *Guides* as the uniform standard applicable to all claimants.³

Section 8123(a) of the Act provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁴ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁵

ANALYSIS

In this case, Dr. Shade provided an opinion that appellant had a 10 percent permanent impairment to the left leg due to loss of range of motion in the left hip. Under Table 17-9, 20 degrees of abduction is a 5 percent impairment and 15 degrees of internal rotation is also a 5 percent impairment.⁶ The remainder of the reported ranges of motion did not result in a ratable impairment under Table 17-9. Based on loss of range of motion for the left hip, Dr. Shade opined that appellant had a 10 percent impairment. Dr. Shade found the date of maximum medical improvement to be February 24, 2004.

The second opinion referral physician, Dr. Sklar, found that appellant had a one percent impairment to the right leg, and two percent to the left leg, due to pain. Although Dr. Sklar did not identify Chapter 18, it was noted by the Office medical adviser that Dr. Sklar used Chapter 18 in rating appellant's impairment. This chapter provides guidelines for a physician to award up to three percent for pain that is not adequately addressed by other methods.⁷ Dr. Sklar found moderate pain in the left hip and mild pain in the right heel and determined that appellant had a two percent impairment to the left leg and a one percent impairment to the right leg. He opined that the date of maximum medical improvement was May 28, 1996.

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ A. *George Lampo*, 45 ECAB 441 (1994).

⁴ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁵ *William C. Bush*, 40 ECAB 1064 (1989).

⁶ A.M.A., *Guides* 537, Table 17-9.

⁷ *Id.*, at 565-91.

The Office relied on the report of Dr. Sklar in calculating appellant's impairment, but the Board finds that the report of Dr. Shade is of virtually equal weight. An Office medical adviser stated that Dr. Shade did not indicate that range of motion was determined using a goniometer. The Board notes, however, that Dr. Sklar did not provide any range of motion results or the method used to measure range of motion.

The Board finds that the medical evidence is in conflict with respect to the degree of permanent impairment, as well as the date of maximum medical improvement. The case will be remanded to the Office for referral to an impartial medical specialist and proper resolution of the conflict. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that there is a conflict in the medical evidence between attending physician Dr. Shade and referral physician Dr. Sklar with respect to the degree of permanent impairment and the date of maximum medical improvement. The case will be remanded for proper resolution of the conflict.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2004 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 27, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member