United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 06-922**
	)	**Issued: December 8, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Dallas, TX, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 24, 2005 and February 9, 2006 schedule award decisions. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award issues.[1]

ISSUES

The issues are: (1) whether appellant has established that she had sustained more than a 5 percent impairment to her left upper extremity and more than a 10 percent impairment to her right upper extremity, for which she received a schedule award; and (2) whether appellant has established that she had sustained more than a 50 percent impairment of her left and right lower extremities, for which she received a schedule award.

[1] The record also contains a February 15, 2006 Office decision denying a consequential injury for a herniated disc at L4-S1. However, in a March 6, 2006 letter to the Board requesting an appeal, appellant's attorney indicated that only review of the Office's schedule award determinations were sought. Accordingly, the Board will not review the February 15, 2006 Office decision.

FACTUAL HISTORY

On October 15, 1990 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim sustained on the same date when she experienced pain in her left hip while picking up a heavy tub of mail. At the time of the injury appellant was on light duty with a 10-pound lifting restriction due to a nonwork-related motor vehicle accident which occurred on August 15, 1990. The claim was accepted for a left hip strain, lumbar strain, bilateral avascular necrosis of the hips with bilateral femoral head decompressions and total hip replacements/arthroplasties and bilateral avascular necrosis of both shoulders as a result of steroid treatment.[2] Following the right bipolar hip replacement of January 17, 2000, appellant developed a small avulsion fracture of the trochanteric area. She worked intermittently until she stopped work on February 5, 1994. The Office paid appropriate compensation for all relevant periods and placed appellant on the periodic rolls. She subsequently retired.

On February 25, 2004 appellant filed a claim for a schedule award. In a May 12, 2004 report, Dr. Michael Taba, a Board-certified orthopedic surgeon, opined that appellant reached maximum medical improvement and had a 37 percent left leg impairment. Under Table 17-8, page 532 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Taba assigned appellant a Grade 4 muscle weakness of her left hip with abduction which he found equated to a 10 percent whole person impairment or a 37 percent leg impairment.

The Office referred appellant, the medical record and a statement of accepted facts, to Dr. Charles E. Graham, a Board-certified orthopedic surgeon, for a second opinion evaluation and impairment rating. In an October 14, 2004 report, Dr. Graham noted the history of injury and provided his examination findings. Range of motion findings for the right shoulder were noted as: extension 44 degrees, flexion 100 degrees, abduction 90 degrees, adduction 25 degrees, internal rotation 75 degrees, and external rotation 85 degrees. Range of motion findings for the left shoulder were noted as: extension 38 degrees, flexion 165 degrees, abduction 125 degrees, adduction 30 degrees, internal rotation 76 degrees and external rotation 80 degrees. Based on appellant's loss of range of motion examination findings and various tables and figures found on pages 474 through 479 of the A.M.A., *Guides*, Dr. Graham opined that appellant had a 10 percent right upper extremity impairment and a 6 percent left upper extremity impairment.[3] As to appellant's lower extremity impairment, Dr. Graham utilized Table 17-33 on page 546 of the A.M.A., *Guides.* Dr. Graham opined that appellant's right hip was in poor condition due to her bipolar hip arthroplasty and provided 75 percent right leg impairment. He opined that appellant's left hip was in fair condition due to her total hip replacement and provided a 50 percent left leg impairment under the same table. Although Dr. Graham cited to the fifth edition of the A.M.A., *Guides*, in the conclusion of his report, he stated that the impairment ratings were based on the fourth edition of the A.M.A., *Guides*.

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[2] Conditions not accepted with this claim include a bilateral rotator cuff tear with repair (left repaired on August 16, 2001) and L4-S1 herniated disc/bulges.

[3] Dr. Graham did not provide his upper extremity impairment calculations.

In a December 11, 2004 report, an Office medical adviser reviewed appellant's medical records including the statement of accepted facts and provided an impairment rating of the lower extremities secondary to the hip replacement surgery. Under Table 17-33, page 546 of the A.M.A., *Guides*, the Office medical adviser noted that total hip replacements with a good result equated to a 37 percent impairment to the lower extremity. Accordingly, the Office medical adviser opined that appellant had 37 percent impairment to both the left and right legs. The dates of maximum medical improvements were noted to be one year subsequent to the hip replacement on the appropriate side or January 1998 for the left leg and January 7, 2001 for the right leg. The Office medical adviser discounted Dr. Graham's opinion because it was based on the fourth edition of the A.M.A., *Guides* and discounted Dr. Taba's impairment rating as he utilized whole person impairments.

By decision dated April 21, 2005, the Office issued schedule awards for 37 percent permanent impairment of both the right and left lower extremities.

In an April 25, 2005 letter, appellant, through her attorney, requested a review of the written record. Appellant further requested that she be rated for her shoulders.

In an August 4, 2005 report, the Office medical adviser reviewed the medial records pertaining to appellant's upper extremity impairment. He opined that the date of maximum medical improvement for appellant's bilateral upper extremity conditions was October 12, 2004. Utilizing the fifth edition of the A.M.A., *Guides* at Figures 16-40, 16-43 and 16-46 on pages 476, 477 and 479, the Office medical adviser opined that appellant had 10 percent impairment to the right arm and 5 percent impairment of the left arm. With respect to the right upper extremity, the Office medical adviser found a flexion to 100 degrees equaled 5 percent impairment, extension to 44 degrees equaled a 0 percent impairment, abduction to 90 degrees equaled 4 percent impairment, adduction to 25 degrees equaled 1 percent impairment, internal rotation to 75 degrees equaled 0 percent impairment and external rotation to 85 degrees equaled 0 percent impairment. With respect to the left upper extremity, the Office medical adviser found a flexion to 165 degrees equaled a 1 percent impairment, extension to 38 degrees equaled 1 percent impairment, abduction to 125 degrees equaled 2 percent impairment, adduction to 30 degrees equaled 1 percent impairment, internal rotation to 76 degrees equaled 0 percent impairment and external rotation to 80 degrees equaled 0 percent impairment.[4]

By decision dated August 24, 2005, the Office issued schedule awards for 5 percent permanent impairment to the left arm and 10 percent impairment to the right arm.

By decision dated September 16, 2005, an Office hearing representative vacated the Office's April 21, 2005 decision finding that a conflict in medical opinion existed between Dr. Graham and the Office medical adviser with respect to the surgical results and impairment to the lower extremities. The case was remanded for referral of appellant to an appropriate medical specialist to assess the results of the surgery and determine the appropriate impairment rating under the A.M.A., *Guides*.

[4] Although the Office medical adviser stated that appellant was previously awarded a 6 percent permanent impairment to the left shoulder and a 10 percent permanent impairment to the right shoulder, the record contains no previous schedule award issued to appellant's upper extremities.

The Office referred appellant, together with her case record, a statement of accepted facts and questions, to Dr. Robert Holladay, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a December 16, 2005 report, Dr. Holladay reviewed appellant's medical history and opined that she reached maximum medical improvement on October 14, 2004. He first utilized Table 17-34, page 548 of the A.M.A., *Guides* to rate appellant's hip replacement results. Dr. Holladay found a total of 53 points for the right hip. He assigned 20 points for moderate pain, 8 points for a mild limp, 5 points for occasional use of a cane, 2 points for distance walked, 1 point for stair climbing as she could ascend or descend some stairs with use of a handrail, 4 points for putting on shoes and socks with ease, 2 points for sitting as she must sit in a high chair, and 1 point for public transportation, as she was capable of driving herself in an automobile and getting in and out. Dr. Holladay found no deformities with regard to leg length discrepancies, no limitations on contractures or range of motion findings, with the exception of hip flexion less than 90 degrees. Thus, he assigned four points for deformity and four points for range of motion. Dr. Holladay further found a total of 64 points for the left hip. He assigned 30 points for mild to moderate pain, 8 points for a mild limp, 7 points for the use of a cane, 2 points for distance walked, 1 point for stair climbing, 4 points for ability to put on shoes and socks, 2 points for ability to sit in high chair and 1 point for ability to drive her automobile. Dr. Holladay found no deformities, no contractures, and no restricted fixed deformities, but assessed zero points for leg length discrepancy; thus, a total of four points were assessed in the deformity category. A total of 5 points was given under the range of motion category: Dr. Holladay gave 1 point for flexion past 90 degrees but found that appellant exceeded the measurements for abduction, adduction and internal and external rotation. Utilizing Table 17-33, page 546 of the A.M.A., *Guides,* he found that the 53 number assigned to the right hip and the 64 number assigned to the left hip with regard to hip replacement results fell under the fair category (50 to 84 points) and resulted in a 50 percent leg impairment. Dr. Holladay concluded that appellant had a 50 percent impairment of the right and left legs.

By decision dated February 9, 2006, the Office issued schedule awards for an additional 13 percent permanent impairment of both the right and left lower extremities.

LEGAL PRECEDENT -- ISSUES 1 & 2

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulation[6] sets 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 how 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 and guidelines so that there are uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* as the appropriate standard for evaluating scheduled losses and the Board has concurred in such adoption.[7]

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[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

The standards for evaluating the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.[8]

ANALYSIS -- ISSUE 1

The Office found that appellant had 5 percent impairment to the left arm and a 10 percent impairment to her right upper extremity based on the August 4, 2005 report of an Office medical adviser. The Office's procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from the attending physician is obtained.[9] Both Dr. Graham and the Office medical adviser reported that appellant had 10 percent impairment to her right upper extremity. However, with respect to her left upper extremity, Dr. Graham found that appellant had a six percent impairment while the Office medical adviser rated a five percent impairment.

The Office medical adviser applied the findings of Dr. Graham to the fifth edition of the A.M.A., *Guides* to find that appellant had a total impairment of 10 percent to her right arm for loss of range of motion. This was based on right shoulder range of motion findings of 5 percent for 100 degrees of flexion and 0 percent for 44 degrees of extension;[10] 4 percent for 90 degrees of abduction and 1 percent for 25 degrees adduction;[11] 0 percent for 75 degrees internal rotation and 0 percent for 85 degrees external rotation.[12] The Office medical adviser also applied the findings of Dr. Graham to the fifth edition of the A.M.A., *Guides* to find that appellant had a total impairment of 5 percent to her left upper extremity for loss of range of motion. This was based on 1 percent for 165 degrees of flexion and 1 percent for 38 degrees of extension;[13] 2 percent for 125 degrees of abduction and 1 percent for 30 degrees adduction;[14] 0 percent for 76 degrees internal rotation and 0 percent for 80 degrees external rotation.[15] The Office medical adviser properly found five percent impairment of the left arm based on loss of range of motion.

There is no other medical evidence of record, based on a correct application of the A.M.A., *Guides*, to establish that appellant has more than a 10 percent permanent impairment of the right arm or more than a 5 percent permanent impairment of the left arm. The Board finds

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[8] *Belinda H. Wilson*, 57 ECAB ___ (Docket No. 05-1426, issued October 19, 2005).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

[10] A.M.A., *Guides* 476, Figure 16-40.

[11] *Id*. at 477, Figure 16-43.

[12] *Id*. at 479, Figure 16-46.

[13] *Supra* note 10.

[14] *Supra* note 11.

[15] *Supra* note 12.

that the Office followed standardized procedures for determining the extent of appellant's permanent impairment.

ANALYSIS -- ISSUE 2

Appellant received schedule awards for a 50 percent impairment of both her left and right lower extremities. The Office determined that a conflict in medical opinion was created due to conflicting assessments regarding the surgical results of appellant's hip surgeries between Dr. Graham, the Office referral physician, and the Office medical adviser. Dr. Graham concluded that appellant had a 75 percent impairment of the right lower extremity based on a hip arthroplasty in "poor condition" and a 50 percent impairment to the left lower extremity based on a hip replacement in "fair condition." The Office medical adviser concluded that a 37 percent rating of each lower extremity was based on a hip replacement with a "good result."

The Board notes, however, that a conflict in medical opinion did not arise as both Dr. Graham and the Office medical adviser examined appellant and her medical records on behalf of the Office.[16] Thus, Dr. Holladay's opinion is that of a second opinion physician. Even though the report of Dr. Holladay is not entitled to the special weight afforded to the opinion of an impartial medical specialist resolving a conflict of medical opinion, his report can still be considered for its own value.[17] Under the circumstances of the case, the Board finds that Dr. Holladay's opinion establishes that appellant has no more than 50 percent impairment of both legs.

Table 17-33, page 546 of the A.M.A., *Guides,* provides impairment estimates for total hip replacement, which includes endoprosthesis, unipolar or bipolar. Surgical results are characterized as good, fair or poor based on a point rating system under Table 17-34 or Table 17-35, pages 548, 549. A fair result for a total hip replacement is achieved when the points total between 50 and 84 points and result in a 50 percent lower extremity impairment.

In a December 16, 2005 report, Dr. Holladay opined that appellant reached maximum medical improvement on October 14, 2004. He calculated a total of 53 points for the right hip, which the Board notes equals a corrected total of 51 points.[18] This was based on 20 points for moderate pain, a total of 15 points for function (8 points for a mild limp, 5 points for supportive cane and 2 points for distance walked), a total of 8 points for activities (1 point for stair

[16] Section 8123(a) of the Act 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. 5 U.S.C. § 8123(a).

[17] *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[18] The Board notes that the total points for the right hips results in a total of 51 and not 53 as stated by Dr. Holladay. However, as noted in the discussion, this mathematical error would not change the ultimate result under Table 17-33, page 546 of the A.M.A., *Guides.*

climbing, 4 points for putting on shoes and socks, 2 points for sitting in a high chair and 1 point for public transportation), a total of 4 points for deformities[19] and a total of 4 points for range of motion.[20] Under Table 17-33, page 546 of the A.M.A., *Guides,* 51 total points for a right hip replacement is classified as a fair result and represents a 50 percent right lower extremity impairment.

Dr. Holladay calculated a total of 64 points for the left hip. This was based on 30 points for mild to moderate pain, a total of 18 points for function (8 points for a mild limp, 7 points for the use of a cane, 2 points for distance walked, 1 point for stair climbing), a total of 7 points for activities (4 points for ability to put on shoes and socks, 2 points for ability to sit in high chair and 1 point for ability to drive her automobile), a total of 4 points for deformities[21] and a total of 5 points for range of motion.[22] Under Table 17-33, page 546 of the A.M.A., *Guides,* 64 total points for a left hip replacement is classified as a fair result and represents to a 50 percent lower extremity impairment. The Board notes that Dr. Holladay based his findings on a review of the record, a current examination and proper application of the A.M.A., *Guides.*

In a May 12, 2004 report, Dr. Taba rated 37 percent impairment to appellant's left lower extremity based on a Grade 4 hip abduction. However, the Board notes that Table 17-8, page 532 of the A.M.A., *Guides*, on which Dr. Taba based his impairment rating, provides only a 25 percent lower extremity impairment for a Grade 4 hip abduction. Dr. Taba's report does not establish that appellant has more than the 50 percent left lower extremity impairment already awarded. Although Dr. Graham found 75 percent right leg impairment, he did not explain how he calculated the point totals pursuant to Table 17-34 of the A.M.A., *Guides*. In contrast, Dr. Holladay explained each calculation from which he determined appellant's point total from Table 17-34, which he then applied to Table 17-33 of the A.M.A., *Guides*. Dr. Holladay and Dr. Graham concurred on appellant's left leg impairment.

There is no other medical evidence of record, based on a correct application of the A.M.A., *Guides*, to establish that appellant has more than a 50 percent permanent impairment of both the left and right lower extremities, for which she received schedule awards.

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[19] The deformity category under Table 17-34, page 548 of the A.M.A., *Guides* has five total possible points. Dr. Holladay assigned four points to the deformity category. He stated that there were no deformities with regard to leg length discrepancies (one point) and contractures (one point) but did not state whether there was any deformities with respect to fixed adduction, fixed internal rotation and fixed external rotation, which are rated at one point each.

[20] Dr. Holladay stated that no limitations were noted under the range of motion findings other than hip flexion which was less than 90 degrees. Under Table 17-34, page 548 of the A.M.A., *Guides* hip flexion less than 90 degrees would result in 0 points. Thus, Dr. Holladay assigned 4 points in the range of motion category.

[21] Dr. Holladay found no deformities, no contractures and no restricted fixed deformities, but assessed zero points for leg length discrepancy.

[22] Dr. Holladay gave 1 point for flexion past 90 degrees found that appellant exceeded the measurements for abduction, adduction and internal and external rotation, which amounted to 1 point each.

CONCLUSION

The Board finds that appellant 5 percent impairment of the left arm and 10 percent impairment of the right arm, for which she received schedule awards. The Board further finds that appellant has no more than a 50 percent permanent impairment of the left and right lower extremities, for which she received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2006 and the August 24, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 8, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board