

**United States Department of Labor
Employees' Compensation Appeals Board**

O.P., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Henderson, TN, Employer)

**Docket No. 08-483
Issued: October 7, 2008**

Appearances:
Appellant, pro se
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 November 28, 2007 appellant filed a timely appeal from the April 30 and August 30, 2007 decisions of the Office of Workers' Compensation Programs denying his claim for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a 37 percent impairment of his right lower extremity and a 37 percent impairment of his left lower extremity, for which he received schedule awards.

FACTUAL HISTORY

On October 4, 2003 appellant, a 35-year-old custodian sustained a right knee injury while moving a cart. The Office accepted the claim for a right knee strain and ganglion cyst. It authorized surgeries to remove a ganglion cyst, which were performed on January 12, 1994 and March 24, 1995 and right knee arthroscopies, which were performed on February 20 and

December 17, 1996.¹ On February 10, 2000 the Office granted appellant a schedule award for a 25 percent impairment of the right leg. The award ran from March 10, 1999 to July 20, 2000.

On May 8, 2001 the Office expanded the claim to include degenerative joint disease of the left hip as consequential to appellant's accepted right knee condition. On February 25, 2002 it authorized a total left hip replacement, which was performed on April 17, 2002. On March 3, 2002 appellant requested a schedule award.²

In a report dated February 26, 2003, Dr. David K. DeBoer, a Board-certified orthopedic surgeon, provided an impairment rating for appellant's total left hip replacement. He opined that, in accordance with Table 17-34 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ appellant obtained good results (based on a score of 87) from the hip replacement.⁴ Dr. DeBoer noted that, under Table 17-33 on page 546 of the A.M.A., *Guides*, a total hip replacement with good results represented a 15 percent whole person impairment rating.⁵

The case record was referred to the Office medical adviser. On March 11, 2003 the medical adviser stated that Dr. DeBoer had provided an impairment rating for appellant's right knee. Based upon Dr. DeBoer's February 26, 2003 report, the medical adviser found that appellant had a 37 percent impairment of his right leg. He opined that, in accordance with Table 17-33 and 17-34 on pages 547 and 548 of the A.M.A., *Guides*, appellant's score of 87 represented a 37 percent right lower extremity impairment rating.

On April 8, 2003 the Office granted appellant a schedule award for a 37 percent impairment rating of the right leg. The period of the award was from March 1, 2003 through March 15, 2005.

On April 23, 2003 appellant submitted another request for a schedule award. In an April 23, 2003 report, Dr. DeBoer provided an impairment rating based on appellant's April 17, 2002 left hip arthroplasty. Referring to Tables 17-33 and 17-34 at pages 546 and 548 of the A.M.A., *Guides*, he reiterated his opinion that appellant had 15 percent whole person impairment, based upon a score of 87, which was considered a good result.

The case record was again referred to an Office medical adviser for review of Dr. DeBoer's April 23, 2003 report and an opinion as to the degree of appellant's left lower extremity impairment due to his left hip replacement surgery. Referring to the A.M.A., *Guides*,

¹ The record reflects that the February 20, 1996 arthroscopy involved a partial medial meniscectomy and debridement of the articular cartilage of the medial femoral condyle. The December 17, 1996 procedure involved partial medial meniscectomy and open debridement of a popliteal cyst.

² Appellant did not specify whether he was requesting a schedule award for impairment to his right or left lower extremity.

³ A.M.A., *Guides* (5th ed. 2001).

⁴ *See id.* at 548, Table 17-34.

⁵ *See id.* at 546, Table 17-33.

the Office medical adviser noted that Dr. DeBoer had obtained a total hip joint score of 87 under Table 17-34 at page 548, which constituted a good result under Table 17-33 at page 546.⁶ He concluded that appellant had a 37 percent impairment of his left lower extremity. The Office medical adviser found the date of maximum medical improvement to be April 23, 2003.

On August 14, 2003 the Office granted appellant a schedule award for a 37 percent impairment of the left lower extremity. The period of the award was from March 16, 2005 to December 15, 2006, designed to follow the period of the April 8, 2003 schedule award.

By decision dated September 23, 2004, the Office vacated its April 8, 2003 schedule award decision, on the grounds that appellant should have been awarded a schedule award for an additional 12 percent impairment, rather than an award for 37 percent impairment.⁷ The decision also vacated the Office's August 14, 2003 schedule award, due to the fact that it covered an incorrect period of time. In an amended decision dated September 23, 2004, the Office granted appellant a schedule award for an additional 12 percent impairment of his right leg and for a 37 percent impairment of the left lower extremity. The period of the award ran from March 1, 2003 to November 12, 2005.

On June 6, 2005 the Office authorized primary total right knee arthroplasty which was performed on June 2, 2005 by Dr. DeBoer. On November 18, 2006 appellant requested a schedule award for impairment pursuant to his right knee replacement.

In a report dated September 20, 2006, Dr. DeBoer stated that appellant was "doing great" following his right knee replacement. Appellant's right knee had full, active extension to 120 degrees of flexion with no instability. Dr. DeBoer found no tenderness with range of motion testing. With regard to the left hip, appellant was able to flex 95 degrees, abduct 30 degrees, adduct 30 degrees, internally rotate 10 degrees, and externally rotate 30 degrees. Dr. DeBoer found no tenderness on range of motion testing.

In an October 27, 2006 report, Dr. DeBoer provided impairment ratings for appellant's lower extremities. He opined that in accordance with Table 17-35 at page 549 of the A.M.A., *Guides*, appellant obtained good results from the knee replacement surgery, as indicated by his score of 95, resulting in a 15 percent whole person impairment pursuant to his right knee replacement under Table 17-33 at page 546. Dr. DeBoer also opined that, in accordance with Table 17-34 at page 548 of the A.M.A., *Guides*, appellant obtained good results from the hip replacement surgery, as indicated by his score of 98, resulting in a 15 percent whole person impairment pursuant to his left hip replacement under Table 17-33 at page 546. Using the Combined Values Chart on page 604, Dr. DeBoer concluded that appellant had 28 percent whole person impairment.

⁶ The Board notes that the medical adviser's report actually refers to Table 17-35 of the A.M.A., *Guides*, which addresses knee replacement results, rather than Table 17-34, which addresses hip replacement results. However, the reference appears to be inadvertent and does not affect the result of the impairment calculation in this case.

⁷ The Office noted that its procedures provide that any previous impairment to a member under consideration is included in calculating the percentage of loss. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(a)(2) (August 2002).

The Office referred the case record to a medical adviser for review and an opinion as to the degree of appellant's right lower extremity impairment. On January 16, 2007 the district medical adviser concluded that appellant had a seven percent impairment of his right knee pursuant to a total medial meniscus incision. He stated that, as arthritis was not an accepted condition, the knee replacement could not be rated for schedule award purposes. On January 24, 2007 the Office asked the medical adviser to clarify whether the seven percent rating was in addition to the previous schedule awards. On January 24, 2007 the adviser stated that his seven percent rating was based on a total meniscectomy of the right knee. As appellant had previously been granted a schedule award for a 37 percent impairment of his right lower extremity, which included the meniscectomy, he was not entitled to an additional award.

By decision dated April 30, 2007, the Office denied appellant's claim for an increased schedule award, finding that the evidence did not demonstrate greater impairment than that already paid.

On June 12, 2007 appellant requested reconsideration of the April 30, 2007 decision. He submitted a copy of Dr. DeBoer's October 27, 2006 report; copies of tables from the fifth edition of the A.M.A., *Guides*; and a November 3, 2006 attending physician's report from Dr. DeBoer. In a May 16, 2007 report, Dr. DeBoer stated that his October 27, 2006 impairment rating was for impairment associated with appellant's hip and knee replacement, noting that appellant reached maximum medical improvement on October 27, 2006.

The Office referred the case to a district medical adviser for an opinion as to the degree of permanent impairment of appellant's lower extremities, as well as the date of maximum medical improvement. In a report dated June 12, 2007, the medical adviser stated that appellant had a total right knee replacement arthroplasty with good results, entitling him to a 37 percent impairment rating for the right lower extremity according to Table 17-33 at page 547 of the A.M.A., *Guides*. He also indicated that appellant had a total left hip replacement arthroplasty with good results, entitling him to a 37 percent impairment rating for the left lower extremity according to Table 17-33. The adviser opined that the date of maximum medical improvement was October 27, 2006.

On August 30, 2007 the Office denied modification of its April 30, 2007 decision denying appellant's request for an increased schedule award. The Office found that the medical evidence of record did not demonstrate that appellant had any impairment of his lower extremities greater than that previously awarded.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁸ sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁹ However, the Act

⁸ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁹ 5 U.S.C. § 8107(c)(19).

does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* as the standard to be used for evaluating schedule losses.¹⁰

ANALYSIS

Appellant asserts that he has more than a 37 percent impairment of his right lower extremity, and more than a 37 percent impairment of his left lower extremity, for which he received schedule awards. The Board finds that the Office's April 30 and August 30, 2007 decisions denying his request for an increased schedule award should be affirmed.

The Office accepted appellant's claim for a right knee strain and ganglion cyst and authorized surgeries to remove a ganglion cyst, which were performed on January 12, 1994 and March 24, 1995, and right knee arthroscopies, which were performed on February 20 and December 17, 1996. It expanded the claim to include degenerative joint disease to the left hip as consequential to appellant's accepted knee condition, and authorized a total left hip replacement, which was performed on April 17, 2002. Subsequently, the Office authorized a total right knee arthroplasty, which was performed on June 2, 2005.

On February 10, 2000 the Office initially granted appellant a schedule award for a 25 percent impairment of the right leg. On September 23, 2004 it granted appellant a schedule award for an additional 12 percent impairment of his right leg, and for a 37 percent impairment of the right lower extremity.

On September 20, 2006 Dr. DeBoer stated that appellant was "doing great" following his right knee replacement. Appellant's right knee had full, active extension to 120 degrees of flexion with no instability. He found no tenderness with range of motion testing. With regard to the left hip, appellant was able to flex 95 degrees, abduct 30 degrees, adduct 30 degrees, internally rotate 10 degrees, and externally rotate 30 degrees. Dr. DeBoer found no tenderness on range of motion testing. In an October 27, 2006 report, he opined that in accordance with Table 17-35 at page 549 of the A.M.A., *Guides*, appellant obtained good results from the surgery, as indicated by his score of 95, resulting in a 15 percent whole person impairment pursuant to his right knee replacement under Table 17-33 at page 546. Dr. DeBoer also opined that in accordance with Table 17-34 at page 548 of the A.M.A., *Guides*, appellant obtained good results from the surgery, as indicated by his score of 98, resulting in a 15 percent whole person impairment pursuant to his left hip replacement under Table 17-33 at page 546. Using the Combined Values Chart on page 604, he concluded that appellant had 28 percent whole person impairment.

On June 12, 2007 the medical adviser properly applied the A.M.A., *Guides* to the information provided by Dr. DeBoer. As the Act does not provide for whole person impairment ratings,¹¹ the adviser correctly provided an impairment rating for each of appellant's lower

¹⁰ 20 C.F.R. § 10.404.

¹¹ *Tommy R. Martin*, 56 ECAB 273 (2005).

extremities, using the calculations provided by Dr. DeBoer. For a total right knee replacement arthroplasty with good results, he found that appellant had a 37 percent impairment of his right lower extremity according to Table 17-33 at page 547 of the A.M.A., *Guides*. For a total left hip replacement arthroplasty with good results, the medical adviser determined that appellant had a 37 percent impairment of the left lower extremity according to Table 17-33 at page 546. He opined that the date of maximum medical improvement was October 27, 2006.

The Board finds that the medical adviser properly applied the appropriate tables and figures contained in the A.M.A., *Guides* in determining that appellant had a 37 percent impairment of his right lower extremity, and a 37 percent impairment of his left lower extremity. Appellant did not submit any medical evidence establishing more than 37 percent permanent impairment of either lower extremity. The Office correctly noted that appellant was previously granted a schedule award for a 25 percent permanent impairment of the right leg, and a subsequent award for an additional 12 percent impairment of the right leg, resulting in awards for a total right lower extremity impairment of 37 percent. Appellant was also previously granted a schedule award for a 37 percent impairment of his left lower extremity. Therefore, as his previous impairment must be included in calculating the percentage of loss, appellant is not entitled to an increased schedule award.¹²

CONCLUSION

The Board finds that appellant has no more than a 37 percent impairment of his right lower extremity, and a 37 percent impairment of his left lower extremity, for which he received schedule awards.

¹² See *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the August 30 and April 30, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 7, 2008
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