

On August 17, 1993 the Office granted appellant a schedule award for a 33 percent impairment rating for the right lower extremity for the period July 10, 1993 to May 6, 1995, for a total of 95.04 weeks of compensation based upon the diagnosis of degenerative joint disease of the right hip.

By decision dated March 16, 2004, the Office terminated appellant's compensation effective March 20, 2004 on the grounds that she refused an offer of suitable work. In an October 8, 2004 decision,² the Board reversed the Office's termination decision. The Board found that the Office did not meet its burden to terminate appellant's compensation because the medical evidence the Office credited was not sufficient to establish that the job offered by the employing establishment was medically suitable for her. Appellant's entitlement to disability compensation was restored. The facts of this case are set forth in the Board's October 8, 2004 decision and are herein incorporated by reference.

On November 2, 2004 appellant filed a Form CA-7 claim for an additional schedule award based on a partial loss of use of her right lower extremity. In a report dated November 1, 2004, Dr. Marc Reiskind, Board-certified in physical medicine and rehabilitation, stated that pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*), appellant had a 20 percent impairment "from her fair total joint results." He found that appellant had a 2 percent impairment based on femoral nerve loss and a 1 percent impairment from obturator nerve loss, giving her a "whole person" impairment of 23 percent.

In a memorandum/impairment evaluation dated December 8, 2004, an Office medical adviser reviewed Dr. Reiskind's findings and conclusions regarding impairments for a femoral nerve loss and an obturator nerve loss and applied them to the applicable figures and tables of the A.M.A., *Guides*. The Office medical adviser found that appellant had a five percent impairment derived from femoral nerve loss and a three percent impairment based on obturator nerve loss, which was consistent with ratings derived from Table 17-37 at page 552 of the A.M.A., *Guides*. The Office medical adviser further found that appellant had a 50 percent impairment based on right hip replacement, which accorded with a "fair" result outlined at Table 17-33, page 546 of the A.M.A., *Guides*. Combining these three findings, the Office medical adviser determined that appellant had a total 58 percent permanent impairment of the right lower extremity.

On January 21, 2005 the Office granted appellant a schedule award for an additional 25 percent impairment rating for the right lower extremity for the period November 1, 2004 to March 19, 2006, for a total of 72 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ set 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

² Docket No. 05-1573 (issued October 8, 2004).

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

compensation is paid in proportion to the percentage loss of use.⁴ However, the Act 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 insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.⁵

ANALYSIS

Appellant was initially granted a schedule award in August 1993 for degenerative joint disease of the right hip. This arthritic hip was eventually replaced in a total hip replacement. Following the hip replacement, in January 2005 appellant's right lower extremity impairment was again evaluated. Appellant's treating physician, Dr. Reiskind offered an opinion regarding appellant's permanent impairment following the hip replacement surgery; however, as his report was not based upon the A.M.A. *Guides*, and evaluated whole body impairment, it was of limited probative value.⁶

Impairments based on lower extremity ratings are discussed in Chapter 17 of the A.M.A., *Guides*. The Office medical adviser was able to utilize findings made by Dr. Reiskind in 2004 during appellant's physical examination and correlate these findings to the A.M.A., *Guides*. In determining an impairment rating based on total hip replacement, the A.M.A., *Guides* indicate at Table 17-33 at page 546 that a 50 percent impairment for right hip replacement is rendered from a "fair" result. Pursuant to Table 17-37 at page 552, a femoral nerve injury involving the lower extremities produces a five percent impairment; an obturator nerve injury produces a three percent impairment of the lower extremities. The Office medical adviser added these three ratings and totaled a 58 percent total impairment of the right lower extremity.⁷

In its January 21, 2005 decision, the Office found that appellant was entitled to an additional 25 percent impairment for the right lower extremity. This award was proper, as the Office had already awarded appellant 33 percent right lower extremity impairment for the degenerative right hip condition in its August 17, 1993 decision. This award was subsumed by the subsequent total hip replacement procedure and the current findings on examination prior to the January 2005 award.

As there is no other medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to more than an additional 25 percent impairment of the right lower extremity.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ 20 C.F.R. § 10.404.

⁶ "Whole man" impairment ratings are not provided for under the Act. *Dennis R. Blackwell*, 41 ECAB 98 (1989).

⁷ Pursuant to the Combined Values Chart at page 604 of the A.M.A., *Guides*, combination -- rather than addition -- of the 3 impairment values results in a total impairment value of 54 percent.

CONCLUSION

The Board finds that appellant has no more than a 25 percent additional impairment of the right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 10, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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