

returned to light duty on February 18, 2004. Appellant ultimately returned to regular duty on March 19, 2004. The Office accepted his claim for aggravated left hip enthesopathy and left osteoarthritis of the thigh and pelvic region. It also approved appellant's total left hip replacement surgery, which took place on August 28, 2003.²

Initial medical reports included reports dated between August 1 and December 29, 2003 from appellant's treating physician, Dr. Peter Dalldorf, a Board-certified orthopedic surgeon, who diagnosed end-stage left hip degenerative joint disease and avascular necrosis. In a July 21, 2004 report, he diagnosed status post left and right total hip replacement. Dr. Dalldorf noted that appellant walked with normal gait, had equal leg lengths and good pain-free motion. He also noted intact sensation and motor functions with palpable pulses and good back motion. X-rays of both hips revealed good placement of components with no evidence of poly wear. Dr. Dalldorf found that appellant was at maximum medical improvement and concluded that appellant had 40 percent impairment for hip replacement for each side.

On October 28, 2004 appellant filed a schedule award claim. On November 8, 2004 the Office requested that Dr. Dalldorf submit an impairment rating according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). In a November 19, 2004 report, Dr. Dalldorf indicated that he had replaced both of appellant's hips. He noted that appellant was doing fairly well and no longer walked with a cane. Dr. Dalldorf also noted that appellant had occasional ache on his left with both hips bothering him to a limited degree. He determined that appellant had 37 percent impairment for each side for hip replacement with good results, citing Table 17-33 on page 546 of the A.M.A., *Guides*.³ On January 25, 2005 an Office medical adviser reviewed Dr. Dalldorf's reports and noted that appellant had bilateral right and left total hip replacement surgery without complications. He determined that appellant had 37 percent impairment for each lower extremity based on Table 17-33 of the A.M.A., *Guides* for good results from total hip replacement.

In a February 25, 2005 decision, the Office issued appellant a schedule award for 37 percent impairment for each lower extremity. It paid him compensation for 213.12 weeks from July 21, 2004 to August 20, 2008.

Appellant submitted several reports dated between July 25, 2005 and April 7, 2008 from Dr. Dalldorf regarding follow-up examinations for his hip condition. In his reports, Dr. Dalldorf noted that appellant walked with a normal gait, was pain free, had equal leg lengths and good motion on both sides, intact sensation and motor function with palpable pulses and good lumbosacral motion. He also noted that x-rays of both hips revealed good placement of components with no sign of loosening or poly wear. Dr. Dalldorf diagnosed status post right and left total hip replacement. He advised that appellant functioned fairly normal but not completely

² Appellant also underwent total right hip replacement surgery in July 2000. This surgery was not related to the present claim.

³ Dr. Dalldorf noted that his original determination of 40 percent impairment for each side was based on the North Carolina Workers' Compensation Rating Handbook and therefore was not applicable under the present claim.

as both hips had been replaced, and therefore his impairment rating remained 37 percent for each hip.

In a July 21, 2008 report, Dr. Dalldorf noted appellant's complaint of new issues with his lower back and pain radiating down his legs. He also noted that x-rays of appellant's hips revealed that they were in perfect position and alignment with no evidence of significant poly wear on either side. Regarding appellant's lower back, Dr. Dalldorf diagnosed low back pain with mild degenerative changes. He also recommended physical therapy for the back. Dr. Dalldorf also advised that appellant continue with his annual follow-up for his hips.

Appellant also submitted reports dated December 15, 2008 and February 16, 2009 from Dr. Hao Wang, a Board-certified physiatrist, who noted that he had a work-related injury with complaints of low back pain. Dr. Wang diagnosed low back pain with significant facet joint degeneration. His reports did not address appellant's hip condition.⁴

On February 4, 2009 appellant filed a claim for an increased schedule award. On February 11, 2009 an Office medical adviser reviewed the medical evidence and opined that there was no evidence that warranted an increased impairment rating. He noted that appellant was previously awarded 37 percent impairment for a "successful total knee arthroplasty." The medical adviser also noted that appellant's current treatment for back pain was not part of the accepted claim.

On February 13, 2009 the Office requested that appellant submit a physician's report assessing his left lower extremity impairment. Appellant submitted reports from Dr. Wang dated February 9 and 23, 2009 diagnosing low back pain, axial mechanical pain and degenerative joint disease of an unclear etiology. Dr. Wang indicated that appellant had full range of motion and normal strength in his lower extremities.

In an April 1, 2009 decision, the Office denied appellant's claim for an increased schedule award of the left lower extremity finding that the medical evidence did not establish that appellant sustained additional permanent loss of function or use of the left lower extremity due to an accepted work injury.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulations 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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards

⁴ On September 29, 2009 the Office notified appellant that his low back condition was not accepted under the present claim.

⁵ 5 U.S.C. §§ 8101-8193. See 5 U.S.C. § 8107.

applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁶

Where a claimant has previously received a schedule award and subsequently claims an additional schedule award due to a worsening of his or her condition, the claimant bears the burden of proof to establish a greater impairment causally related to the employment injury.⁷

A claim for an increased schedule award may be based on new exposure. Absent any new exposure to employment factors, a claim for an increased schedule award may also be based on medical evidence indicating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.⁸

ANALYSIS

Appellant previously received a schedule award for 37 percent impairment of his left lower extremity due to his accepted aggravated left hip enthesopathy. He subsequently filed a claim for an increased schedule award for his accepted condition.

Dr. Dalldorf's reports dated between July 25, 2005 and April 7, 2008 found that appellant's left lower extremity impairment remained at 37 percent based on his original findings citing Table 17-33 on page 546 of the A.M.A., *Guides*. This provision of the A.M.A., *Guides* states that a total hip replacement with good results equates to 37 percent impairment of the lower extremity. Additionally, Dr. Dalldorf supported that appellant's impairment remained the same by noting that his left hip continued to have good placement of components with no sign of loosening. Moreover, examination revealed that appellant walked with a normal gait, was pain free, had equal leg lengths and good motion on both sides, had intact sensation and motor function with palpable pulses and good lumbosacral motion. On July 21, 2008 Dr. Dalldorf noted that x-rays of appellant hips showed that they were in perfect position and alignment with no evidence of significant poly wear on either side.

After receiving the medical evidence of record, the Office properly referred the matter to an Office medical adviser.⁹ The Office medical adviser reviewed the medical evidence of record and concurred with Dr. Dalldorf's finding of 37 percent impairment of the left lower extremity due to a successful total left hip replacement. None of the other medical evidence of record supports that appellant has a greater impairment of his left lower extremity. As noted, it is appellant's burden of proof to establish a greater impairment causally related to the employment injury. Also, Dr. Wang's reports only addressed appellant's low back condition, which is not an

⁶ See 20 C.F.R. § 10.404; *R.D.*, 59 ECAB ____ (Docket No. 07-379, issued October 2, 2007).

⁷ See *Edward W. Spohr*, 54 ECAB 806 (2003).

⁸ See *Linda T. Brown*, 51 ECAB 115 (1999); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(b) (March 1995).

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *L.H.*, 58 ECAB 561 (2007) (the Act's procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*).

accepted condition under the present claim, and did not address permanent impairment of appellant's left leg due to his accepted conditions. Thus, his reports do not support any greater impairment of the left leg pursuant to the A.M.A., *Guides*.

On appeal, appellant asserts that he is entitled to an increased schedule award as Dr. Dalldorf's April 22, 2009 report supports that he is still in severe pain from his hip condition, which also causes severe back pain. However, the report to which appellant refers was submitted after the Office issued its April 1, 2009 decision. The Board may only review evidence that was in the record at the time the Office issued its final decision.¹⁰ Appellant also asserts that the Office's denial of an increased schedule award is improper because the medical adviser erroneously indicated that he underwent total knee arthroplasty. Although the medical adviser mistakenly indicated "knee" instead of "hip," this appears to be in the nature of a transcription error as the medical adviser still noted the correct impairment rating of 37 percent which the A.M.A., *Guides* assigns to a total hip replacement with good results. Moreover, despite the medical adviser's factual error, appellant still has not submitted sufficient medical evidence to meet his burden of proof establishing that he has an increased impairment of the left lower extremity.

CONCLUSION

The Board finds that appellant has no more than a 37 percent permanent impairment of the left lower extremity for which he has received a schedule award.

¹⁰ See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated April 1, 2009 is affirmed.

Issued: February 4, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board