

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

R.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bemidji, MN, Employer**

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**Docket No. 10-1777
Issued: March 16, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2010 appellant filed a timely appeal from a March 19, 2010 merit decision of the Office of Workers' Compensation Programs granting him a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue is whether appellant has more than nine percent permanent impairment of each lower extremity.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated October 8, 2008, the Board affirmed a June 4, 2007 decision finding that appellant had not established that he

developed osteoarthritis of the bilateral hips due to factors of his federal employment.¹ The facts and circumstances surrounding the prior appeal are hereby incorporated by reference.

On August 27, 2009 appellant requested reconsideration. In support of his request, he submitted May 21 and August 6, 2009 medical reports from Dr. Sebastian R. Mangiamele, a Board-certified physiatrist. By decision dated October 1, 2009, the Office vacated its June 4, 2007 decision and accepted that appellant sustained bilateral osteoarthritis of the hips causally related to factors of his federal employment.

On October 19, 2009 appellant filed a claim for a schedule award. On the claim form the employing establishment noted that he had retired from employment.

By letter dated November 2, 2009, the Office requested that he submit an impairment evaluation in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009). It enclosed a permanent impairment worksheet.

On November 23, 2009 appellant's attorney requested that the Office forward the May 21 and August 6, 2009 reports from Dr. Mangiamele to an Office medical adviser for review in connection with appellant's schedule award claim. In the May 21, 2009 report, Dr. Mangiamele diagnosed bilateral hip osteoarthritis. He noted that appellant had limitations performing activities of daily living. Dr. Mangiamele discussed appellant's complaints of hip discomfort, problems walking and morning stiffness. He found no atrophy on physical examination and limited hip flexion and extension. Dr. Mangiamele indicated that x-rays showed mild narrowing of each hip joint.

On August 6, 2009 Dr. Mangiamele citing the sixth edition of the A.M.A., *Guides*, determined that appellant had a Grade Modifier 2 for function history as he had "interference with regular use of limb for activities of daily living, but help or assistance is not required." He further found a Grade Modifier 1 for physical findings due to "minimal palpatory findings consistently documented without observed anomalies" and a Grade Modifier 1 for "cartilage interval less than normal or 25 percent loss normal compared to the unopposed, uninjured side or a mild reduction in joint space...." Dr. Mangiamele cited to Table 16-9 on page 520 and stated, "We note bilateral hip involvement and features within the history of present illness which suggest a [C]lass 2. Class 1 default may be characterized as Grade C. [Appellant] is considered to have a Grade D impairment or approximately 10 percent impairment of the bilateral hips...."

¹ Docket No. 08-1133 (issued October 8, 2008). On March 5, 2007 appellant, then a 57-year-old city letter carrier technician, filed an occupational disease claim alleging that he sustained bilateral osteoarthritis of the hips due to his federal employment. On June 4, 2007 the Office denied his claim after finding that the medical evidence was insufficient to show a causal relationship between his work duties and his hip condition.

On January 25, 2010 an Office medical adviser reviewed the medical evidence and stated:

“[Appellant] has a long history of bilateral hip pain which is worse in the morning and ameliorates as the day progresses. The pain limits [his] ability to participate in some of his hobbies such as gold and hunting. Physical examination demonstrated a hip flexion contracture bilaterally, worse on the left than the right. The lower extremity strength was noted to be normal. The gait was antalgic. The remainder of the examination was unremarkable. Mild narrowing and spurring of each hip joint was noted bilaterally.”

The Office medical adviser extrapolated from Table 16-4 on page 514 of the A.M.A., *Guides* to find that appellant had a Class 1 impairment, with a default value of seven percent, for a bilateral three millimeter (mm) cartilage interval due to hip arthritis. He applied a Grade Modifier 2 for problems with activities of daily living and a Grade Modifier 2 for an antalgic gait. The Office medical adviser utilized the net adjustment formula and moved the default award over two places to find a Grade E or nine percent impairment of each lower extremity. He opined that appellant reached maximum medical improvement on June 12, 2007.²

By decision dated March 19, 2010, the Office granted appellant a schedule award for a nine percent permanent impairment of the right lower extremity and a nine percent permanent impairment of the left lower extremity. The period of the award ran for 51.84 weeks from June 12, 2007 to June 8, 2008.

On appeal, appellant questions why his schedule award ended on June 8, 2008. He asserts that he should receive 288 weeks’ of compensation for each leg as he is totally disabled. Appellant asserts that he should also receive workers’ compensation benefits from June 9, 2008 to June 10, 2010.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act³ and its implementing federal regulations,⁴ 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. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all

² The Office medical adviser found maximum medical improvement occurred around the date of the last examination by Dr. Peter A. Eriksson, an attending Board-certified physician.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).⁷ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

ANALYSIS

The Office accepted appellant's claim for bilateral osteoarthritis of the hips. On October 19, 2009 appellant filed a schedule award claim. In a report dated May 21, 2009, Dr. Mangiamele discussed appellant's difficulties performing activities of daily living and found that he had Class 1 impairment, with some characteristics of a Class 2 impairment. He did not provide the specific diagnosis or the default value of the diagnosed condition. Dr. Mangiamele adjusted the impairment by grade modifiers for functional history of two, physical findings of one and clinical studies of one. He concluded that appellant had a Grade D or 10 percent impairment of both hips. It appears that Dr. Mangiamele found that appellant had a five percent impairment of each hip. However, Table 16-4 of the sixth edition of the A.M.A., *Guides*, does not provide either a 5 percent or 10 percent impairment for a Grade D hip condition. Consequently, Dr. Mangiamele's opinion is not in conformance with the A.M.A., *Guides*.

On January 25, 2010 an Office medical adviser applied the sixth edition of the A.M.A., *Guides* to Dr. Mangiamele's findings. He utilized the diagnosis of hip arthritis to find a default impairment value of seven percent for three mm of cartilage interval.⁸ The Office medical adviser found that appellant had a Grade Modifier 2 for functional history and a Grade Modifier 2 for antalgic gait. He applied the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (2-1) + (2-1) + (1-1) + 2, which moved the default value 2 places to the right for a total impairment of each lower extremity of nine percent. There is no evidence conforming to the A.M.A., *Guides* establishing that appellant is entitled to a greater award.

On appeal, appellant maintains that he should receive 288 weeks of compensation for each leg, the amount awarded under the Act for the total loss of a limb. He further questions why his schedule award ended given his continued disability. The amount payable pursuant to a schedule award, however, does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.⁹ Section 8107 provides a compensation schedule for payment of awards for permanent

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ A.M.A., *Guides* at 494-531.

⁸ *Id.* at 514, Table 16-4.

⁹ *Denise L. Crouch*, 57 ECAB 161 (2005); *Ruben Franco*, 54 ECAB 496 (2003).

impairment of listed body members. The schedule establishes how many weeks of compensation an employee will receive in the event of total functional loss or dismemberment. Compensation for partial loss of use of a scheduled member is awarded for a proportionate number of weeks.¹⁰ For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant's permanent impairment of each leg is nine percent, he is entitled to nine percent of 288 weeks or 25.92 weeks of compensation for each leg or total compensation for both legs of 51.84 weeks. Under the schedule award provisions, he is entitled to no more.

CONCLUSION

The Board finds that appellant has no more than a nine percent permanent impairment of each lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ See *supra* note 3; *Carol A. Smart*, 57 ECAB 340 (2006).