United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 15-1401**
	)	**Issued: July 13, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 11, 2015 appellant filed a timely appeal from an April 23, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 met his burden of proof to establish more than 21 percent permanent impairment of his left lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On July 12, 2013 appellant, then a 50-year-old city carrier, filed an occupational disease claim alleging a degenerative left hip condition due to performing his work duties over time. On March 12, 2013 he first became aware of the claimed condition and that it was caused or

[1] 5 U.S.C. §§ 8101-8193.

aggravated by work factors. In a July 8, 2013 statement, appellant indicated that, for the prior 28 years, his work required him to extensively walk on his mail route, ascend and descend stairs, enter in and exit his postal vehicle, and carry a heavy mail bag on his left shoulder. He stopped work on March 8, 2013.[2]

On October 28, 2013 appellant underwent a total replacement of his left hip.

By decision dated April 11, 2014, OWCP accepted appellant's claim for work-related aggravation of localized primary osteoarthritis of the pelvic region and thigh, bilateral.[3] It later authorized reimbursement for appellant's left hip surgery.

Appellant returned to his regular work on a full-time basis on July 28, 2014.

On October 14, 2014 appellant filed a claim for a schedule award due to his accepted work injury.

In a report received by OWCP on December 31, 2014,[4] Dr. Pye provided an opinion that, under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A, *Guides*),[5] appellant had 31 percent permanent impairment of his left leg.[6] He discussed appellant's medical history and his work duties as a city carrier. Dr. Pye noted that diagnostic testing showed that appellant's left hip lost 50 percent of the cartilage interval as compared to the right hip. He reported findings on physical examination, including range of motion findings for the left hip which he described as decreased in all planes of motion. Dr. Pye found 4+ muscle strength in all lower extremity muscle groups.

With respect to permanent impairment, he noted that, under Table 16-4 (Hip Regional Grid) on page 515, appellant's diagnosis of left total hip replacement fell under class 3, grade C with a default impairment value of 37 percent due to a fair result from the surgery (fair position, mild instability and/or mild motion deficit). Dr. Pye indicated that appellant had a grade modifier of 1 for functional history, a grade modifier of 2 for physical examination, and grade modifier of 0 for clinical studies. With respect to the functional history grade modifier, he indicated that appellant had an antalgic limp with asymmetric shortened stance that was

[2] Appellant submitted a March 26, 2013 note in which an attending physician provided a diagnosis of degenerative joint disease of the left hip. On October 5, 2013 he began to receive disability compensation on the daily rolls.

[3] OWCP initially denied appellant's claim on October 9, 2013 because he had not submitted sufficient medical evidence to establish that he sustained a work-related left hip condition. After the denial of his claim, appellant submitted diagnostic testing from July 2013, showing that he had arthritis in his left hip and a narrative report in which Dr. Harold T. Pye, an attending Board-certified occupational medicine physician, indicated that his hip osteoarthritis was aggravated by his federal work duties as a city carrier.

[4] The narrative portion of the report is dated "December 2014" and the impairment rating calculation portion of the report is dated December 2, 2014.

[5] A.M.A, *Guides* (6th ed. 2009).

[6] Dr. Pye also provided a calculation that appellant had a 20 percent permanent impairment of his right lower extremity, but this matter is not currently before the Board.

corrected with footwear modifications and/or orthotics. Dr. Pye noted that calculation of the net adjustment formula moved appellant's left leg impairment to the class 3, grade A impairment rating of 31 percent under Table 16-4 on page 515.

OWCP sent Dr. Pye's December 2014 report and the case file to Dr. Michael Hellman, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, for review and a determination regarding whether appellant had permanent impairment of his left lower extremity.

In a March 12, 2015 report, Dr. Hellman determined that, under the sixth edition of the A.M.A., *Guides*, appellant had 21 percent permanent impairment of his left lower extremity. He used Table 16-4 (Hip Regional Grid) on page 515 to determine that appellant's diagnosis of total left hip replacement fell under class 2, grade C with a default impairment value of 25 percent. Dr. Hellman referenced Table 16-6 on page 516 to find that appellant had a grade modifier of 1 for functional history, noting that he had returned to full-duty work on July 28, 2014. Using Table 16-7 on page 517, appellant had a grade modifier of 1 for physical examination due to scar sensitivity and full range of left hip motion. Dr. Hellman indicated that Table 16-8 on page 519 showed that appellant had a grade modifier of 1 for clinical studies, noting that magnetic resonance imaging MRI scan and x-ray testing confirmed left hip arthritis and that no follow-up x-rays after surgery were available for review. Application of the net adjustment formula yielded a -3 value and moved appellant's left leg impairment to the class 2, grade A impairment rating of 21 percent under Table 16-4 on page 515. Dr. Hellman agreed with the maximum medical improvement date set by Dr. Pye of July 28, 2014 and stated:

> "I disagree with Dr. Pye's impairment rating. He does not specifically explain why he thinks the total hip replacement only offered [appellant] a 'fair' result. [Appellant] has excellent range of motion, no pain, and has been able to return to full-duty work. I recommend that the diagnosis be a total hip replacement with a 'good' result."

By decision dated April 23, 2015, OWCP granted appellant a schedule award for 21 percent permanent impairment of his left leg. The award ran for 60.48 weeks and was based on the impairment rating of Dr. Hellman, the OWCP medical adviser. OWCP found that appellant reached maximum medical improvement on July 28, 2014.[7]

LEGAL PRECEDENT

The schedule award provision of FECA[8] and its implementing regulations[9] 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, FECA 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 to all claimants, good administrative practice

[7] The start date of the schedule award was adjusted from July 28, 2014 to August 9, 2014 because appellant received disability compensation through August 8, 2014.

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404 (1999).

necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[10]

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the hip, the relevant portion of the lower extremity for the present case, reference is made to Table 16-4 (Hip Regional Grid) beginning on page 512.[11] After the Class of Diagnosis (CDX) is determined from the Hip Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[13]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[14]

Section 8123(a) of FECA provides that, 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.[15] When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[16]

ANALYSIS

OWCP accepted appellant's claim for work-related aggravation of localized primary osteoarthritis of the pelvic region and thigh, bilateral. By decision dated April 23, 2015, it

[10] *K.H.*, Docket No. 09-341 (issued December 30, 2009). For OWCP decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

[11] *Supra* note 5 at 512-15.

[12] *Id* at 515-22.

[13] *Id.* at 23-28.

[14] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6d-f (February 2013).

[15] 5 U.S.C. § 8123(a); *see J.J.*, Docket No. 09-27 (issued February 10, 2009); *Geraldine Foster*, 54 ECAB 435 (2003).

[16] *B.P.*, Docket No. 08-1457 (issued February 2, 2009); *J.M.*, 58 ECAB 478 (2007); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

granted appellant a schedule award for 21 percent permanent impairment of his left leg. The award was based on the impairment rating of Dr. Hellman, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, who evaluated the findings of Dr. Pye, the attending Board-certified occupational medicine physician.

The Board finds that, due to a conflict in the medical opinion evidence, the case is not in posture for decision regarding whether appellant has more than 21 percent permanent impairment of his left lower extremity.

In a report received by OWCP on December 2014, Dr. Pye provided an opinion that, under the standards of the sixth edition of the A.M.A., *Guides*, appellant had 31 percent permanent impairment of his left lower extremity.[17] He noted that, under Table 16-4 on page 515, appellant's diagnosis of left total hip replacement fell under class 3, grade C with a default impairment value of 37 percent due to a fair result from the surgery (fair position, mild instability and/or mild motion deficit).[18] Dr. Pye indicated that appellant had a grade modifier of 1 for functional history, a grade modifier of 2 for physical examination, and grade modifier of 0 for clinical studies.[19] He noted that calculation of the net adjustment formula moved appellant's left leg impairment to the class 3, grade A impairment rating of 31 percent under Table 16-4 on page 515.

In contrast, Dr. Hellman, the OWCP medical adviser, found that appellant had 21 percent permanent impairment of his left lower extremity. He noted that he used Table 16-4 (Hip Regional Grid) on page 515 to determine that appellant's diagnosis of left total hip replacement fell under class 2, grade C with a default impairment value of 25 percent. Dr. Hellman explicitly indicated that he disagreed with Dr. Pye's placement of appellant's diagnosis of left total hip replacement under class 3.[20] Moreover, he provided different grade modifiers than those provided by Dr. Pye in that he found that appellant had a grade modifier of 1 for physical examination (versus 2 found by Dr. Pye) and a grade modifier of 1 for clinical studies (versus 0 found by Dr. Pye).[21]

Consequently, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence between Dr. Hellman and Dr. Pye regarding whether

[17] Dr. Pye reported findings on physical examination, including range of motion findings for the left hip which he described as decreased in all planes of motion. He indicated that appellant had 4+ muscle strength in all lower extremity muscle groups.

[18] *See supra* note 5 at 515, Table 16-4 (Hip Regional Grid).

[19] *See id.* at 515-22.

[20] Dr. Hellman stated, "I disagree with Dr. Pye's impairment rating. He does not specifically explain why he thinks the total hip replacement only offered [appellant] a 'fair' result. [Appellant] has excellent range of motion, no pain, and has been able to return to full-duty work. I recommend that the diagnosis be a total hip replacement with a 'good' result."

[21] Both Dr. Hellman and Dr. Pye found a grade modifier of 1 for functional history. It is noted that Dr. Pye and Dr. Hellman agreed that appellant's date of maximum medical improvement was July 28, 2014, the date he returned to his regular work on a full-time basis.

appellant has more than 21 percent permanent impairment of his left leg.[22] On remand OWCP should refer appellant, along with the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on this matter. After carrying out this development, it should issue an appropriate decision regarding appellant's claim.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has more than 21 percent permanent impairment of his left lower extremity. The case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 13, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[22] *See supra* note 15.