

appellant's claim for neck sprain/strain, bilateral contusions of the hips and contusions of the back.

In a March 5, 2004 report, Dr. Tracey Rae Adams, a Board-certified physiatrist, noted that appellant was injured when mail fell on him. She diagnosed contusion to thoracic and lumbar spine, bilateral hips and pelvis and recommended that x-rays be taken. Dr. Adams also noted that appellant had a preexisting history of back pain, for which he had taken Celebrex but had not experienced any relief. X-rays revealed mild to moderate degenerative changes of the thoracic and lumbar spines as well as the hips and pelvis. Dr. Adams submitted additional reports noting his status and restrictions. On June 8 and 9, 2004 Dr. Jonathan B. Bard, a Board-certified radiologist, detailed the results of magnetic resonance imaging (MRI) scans of appellant's cervical, thoracic and lumbar spine and both hips. The MRI scans revealed mild to moderate multilevel disc bulging and spondylosis on appellant's cervical, thoracic and lumbar spines, as well as degenerative changes consistent with osteoarthritis affecting appellant's hips bilaterally.

In a March 11, 2005 report, Dr. Adams stated that authorization for further physical therapy had been denied and that appellant was no longer interested in physical therapy. She indicated that, "[w]ithout further physical therapy, therefore, we will not be able to change his permanent work restrictions. Therefore, [appellant] would like to consider an impairment rating at this time." Dr. Adams noted that appellant had a limited spinal range of motion.

In a March 31, 2005 report, Dr. Adams noted appellant's complaints of pain, decreased range of motion and weakness in the hips bilaterally as well as the cervical, thoracic and lumbar spines. For range of motion of appellant's right hip, she measured 90 degrees of flexion, 18 degrees of extension, 24 degrees of abduction, 18 degrees of adduction, 35 degrees of internal rotation and 20 degrees of external rotation. Dr. Adams indicated that these measurements demonstrated mild impairment with regard to flexion, abduction and external rotation and no impairment with regard to extension, adduction and internal rotation. She also noted that appellant had normal strength and gait. Dr. Adams concluded that appellant's right hip was mildly impaired, for a two percent whole person impairment. For the left hip, she measured 90 degrees of flexion, 20 degrees of extension, 15 degrees of abduction, 8 degrees of adduction, 35 degrees of internal rotation and 18 degrees of external rotation. Dr. Adams opined that these measurements showed mild impairment of flexion, abduction, adduction and external rotation and no impairment with regard to extension and internal rotation. Appellant's strength and gait were normal. Dr. Adams concluded that appellant's left hip was moderately impaired, for a whole person impairment of four percent. She concluded that range of motion deficits for appellant's hips were the best assessment of his physical impairment due to his injury. Dr. Adams also rated five percent impairment for the cervical spine, five percent impairment for the thoracic spine and five percent impairment for the lumbar spine. She concluded that appellant had 15 percent impairment of the spine, which, combined with hip impairment, resulted in a 20 percent whole person impairment. Dr. Adams noted that appellant reached maximum medical improvement as of March 31, 2005.

On April 25, 2005 appellant requested a schedule award. In an accompanying attending physician's report, prepared on March 31, 2005, Dr. Adams stated that appellant was impaired due to cervical and thoracic spine strains and lumbar and hip contusions. In a June 24, 2005

report, Dr. Adams noted that appellant had not yet received a decision on his impairment rating and that his current work assignment continued to maximize his capabilities.

By letter dated July 28, 2005, the Office notified appellant that schedule awards were not payable for spine impairments, but if appellant's accepted injury caused any impairment of the extremities, such impairment would be compensable.

In an August 5, 2005 report, Dr. Adams indicated that appellant's spine impairments did not result in nerve root injury or radiculopathy, which would have resulted in upper extremity or lower extremity impairments. Therefore, he did not have impairment to his upper and lower extremities due to his spine injuries." Dr. Adams noted, however, that appellant did sustain contusions to the hips resulting in bilateral impairment. She reiterated that appellant had two percent whole person impairment of his right hip and four percent whole person impairment of his left hip, resulting in six percent whole person impairment.

After the Office advised appellant that schedule awards were not payable for whole person impairment, Dr. Adams provided a February 17, 2006 addendum to her impairment rating. She noted that appellant did not have any ratable impairment for his spine injuries and addressed his bilateral hip impairment. Dr. Adams indicated that appellant had two percent whole person impairment for his right hip, which "translates to a five percent lower extremity impairment." She also indicated that appellant's 4 percent whole person impairment for his left hip "translates to a 10 percent lower extremity impairment." Dr. Adams stated that she based her conclusions on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* 537, Table 17-9.

On May 5, 2006 an Office medical adviser noted that Dr. Adams based her impairment rating on loss of range of motion due to appellant's accepted hip contusions. However, the medical adviser stated that the A.M.A., *Guides* does not provide for an impairment rating based on strains or contusions, and opined that such injuries were "self-limited" and not ratable. The Office medical adviser found no ratable impairment.

By decision dated May 23, 2006, the Office denied appellant's schedule award claim.

Appellant requested reconsideration on June 20, 2006. In a June 9, 2006 report, Dr. Adams reiterated her impairment rating of 5 percent lower extremity impairment for the right hip and 10 percent lower extremity impairment for the left hip. She explained: "According to the fifth edition A.M.A., *Guides* diagnosis-based estimates, Table 17-33, page 546, there is no specific assessment for the diagnosis of hip contusion. However, in [appellant's] case, bilateral hip contusions had led to decreased range of motion about bilateral hips. Therefore, [appellant] is entitled to impairment rating/schedule award related to decreased range of motion about the hips."

By decision dated July 21, 2006, the Office denied appellant's reconsideration request without conducting a merit review.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 to all claimants, good administrative practice 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 regulation as the appropriate standard for evaluating schedule losses.³

Not all medical conditions accepted by the Office result in permanent impairment to a scheduled member.⁴ Before applying the A.M.A., *Guides*, the Office must determine whether the claimed impairment of a scheduled member is causally related to the accepted work injury.⁵ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁶

ANALYSIS -- ISSUE 1

The Board finds that the Office properly denied appellant's schedule award claim, as appellant did not present sufficient medical evidence to provide a basis for permanent impairment causally related to the accepted employment injuries.⁷

Appellant provided an impairment rating from Dr. Adams, based on loss of range of motion of the spine and hips. The Office advised Dr. Adams that it does not provide compensation for spine impairments;⁸ thereafter, Dr. Adams' reports focused on his claimed bilateral hip impairment. Dr. Adams initially calculated appellant's impairment based on a "whole person" impairment rating. However, the Office does not evaluate schedule award claims in terms of "whole person" impairment ratings.⁹ Dr. Adams then revised her impairment

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *See id.*

⁴ *Thomas P. Lavin*, 57 ECAB ____ (Docket No. 05-1229, issued February 3, 2006).

⁵ *Michael S. Mina*, 57 ECAB ____ (Docket No. 05-1763, issued February 7, 2006).

⁶ *Veronica Williams*, 56 ECAB ____ (Docket No. 04-2120, issued February 23, 2005).

⁷ The Board notes that appellant submitted additional medical evidence after the Office's July 21, 2006 final decision. However, the Board cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

⁸ 5 U.S.C. § 8101(19); *Harry D. Butler*, 43 ECAB 859 (1992); *see also Rozella L. Skinner*, 37 ECAB 398, 402 (1986) (anatomical members do not include impairments of the back or the body as a whole).

⁹ *See Gordon McNeill*, 42 ECAB 140, 145 (1990).

rating to reflect her calculations of appellant's bilateral hip impairment based on loss of range of motion.

The Board finds that Dr. Adams did not provide sufficient explanation to establish that appellant's accepted condition, bilateral hip contusion, caused his loss of range of motion of the hips. Dr. Adams stated that appellant's hip contusion led to his loss of range of motion, but did not explain her conclusion or provide rationale supporting causal relationship between the initial hip contusion and appellant's claimed permanent impairment.¹⁰ This is especially important where the medical evidence indicates that appellant had preexisting degenerative changes and arthritis in his hips. Dr. Adams did not offer any explanation as to why the accepted contusion would have caused the permanent impairment in light of appellant's preexisting degenerative conditions. The Office medical adviser indicated that appellant's hip contusions were self-limited and should not have caused any permanent impairment. Appellant must establish that the contusion caused a ratable impairment.¹¹ He has not met his burden of proof in establishing that his accepted hip contusions caused a permanent partial impairment due to loss of range of motion, as Dr. Adams did not present rationale or explanation supporting her conclusion that appellant had permanent impairment due to the accepted bilateral hip contusion.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128 of the Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulation provides guidance for the Office in using this discretion.¹² The regulation provides that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”¹³

Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on

¹⁰ See *Steven S. Saleh*, 55 ECAB 169, 172 (2003); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). The Board has held that a medical opinion not fortified by medical rationale is of little probative value. *Caroline Thomas*, 51 ECAB 451, 456 n.10 (2000); *Brenda L. Dubuque*, 55 ECAB 212, 217 (2004).

¹¹ See *Lela M. Shaw*, 51 ECAB 372 (2000).

¹² 20 C.F.R. § 10.606(b)(2) (1999).

¹³ *Id.*

the merits.¹⁴ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant's request for reconsideration without conducting a merit review, as appellant did not meet any of the above-listed criteria warranting a merit review. First, appellant did not submit any argument establishing that the Office erroneously applied or interpreted a point of law. Second, appellant did not advance a relevant legal argument not previously considered by the Office.

Appellant did submit a new medical report, Dr. Adams' June 9, 2006 report. However, the Board finds that Dr. Adams' June 9, 2006 report was not relevant as it constituted a mere repetition of findings and explanations previously reviewed by the Office. Dr. Adams did not reach a different conclusion, nor did she explain her findings in a new way. The Board has previously held that medical evidence is insufficient to warrant a merit review where it is repetitious or duplicative of evidence previously of record.¹⁶ Therefore, the Board finds that Dr. Adams' June 9, 2006 report was insufficient to require the Office to reopen appellant's claim for a merit review, as she merely restated conclusions and explanations already of record in her prior medical reports.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he was entitled to a schedule award for permanent partial impairment of the lower extremities. The Board also finds that the Office properly denied appellant's request for reconsideration without conducting a merit review.

¹⁴ 20 C.F.R. § 10.608(b) (1999).

¹⁵ *Annette Louise*, 54 ECAB 783 (2003).

¹⁶ *See Eugene F. Butler*, 36 ECAB 393, 398 (1984) (where the Board held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

ORDER

IT IS HEREBY ORDERED THAT the July 21 and May 23, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 22, 2007
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