

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of J. WESLEY JACOBS and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION, Dallas, Tex.

*Docket No. 97-440; Submitted on the Record;
Issued October 7, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to a schedule award for an April 5, 1995 employment injury.

The Office of Workers' Compensation Programs accepted appellant's claim for a lumbar sprain and lumbar subluxation.

On June 15, 1995 appellant filed a claim for a schedule award.

By letter dated July 25, 1995, the Office requested Dr. Pablo Vazquez-Seoane, a Board-certified orthopedic surgeon, to assess whether appellant had a permanent impairment to one or both of his lower extremities due to spinal pathology pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994). In a report dated April 26, 1995, Dr. Vazquez-Seoane diagnosed lumbar disc herniation but provided no rating. In a report dated June 19, 1995, he stated that he estimated that appellant had a seven percent impairment due to his disc herniation with nerve damage.

In a report dated October 17, 1995, appellant's treating physician, Dr. Michael S. Boss, a chiropractor, using the A.M.A., *Guides* (4th ed. 1993), opined that appellant had a "14 percent total whole person impairment with 1 percent whole person impairment being contributed to sensory impairment in the lower extremity." In a report dated May 14, 1996, Dr. Boss reiterated his opinion that, pursuant to the A.M.A., *Guides* appellant had a 14 percent impairment rating due to the whole person as a result of his April 5, 1995 spinal injury, with 7 percent due to lumbar disc injury, 6 percent due to the lumbar range of motion deficit caused by the April 5, 1995 employment injury and 1 percent impairment due to sensory deficit in the lower extremity caused by the April 5, 1995 employment injury.

By decision dated September 13, 1995, the Office denied the claim stating that appellant had not established that he is entitled to a schedule award.

The Board finds that appellant has not met his burden in establishing that he is entitled to a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner, by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² 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.³

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.⁴ As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back⁵ or an impairment of the whole person,⁶ no claimant is entitled to such an award.⁷ A claimant, however, may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originated in the spine.⁸

The Board has held that medical opinions, in general, can only be given by a qualified physician.⁹ Pursuant to sections 8101(2) and (3) of the Act¹⁰ the Board has recognized chiropractors as physicians to the extent of diagnosing spinal subluxations according to the Office's definition¹¹ and treating such subluxations by manual manipulation.¹² The Board has held chiropractic opinions to be of no probative medical value on conditions beyond the spine.¹³

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁴ *George E. Williams*, 44 ECAB 530, 533 (1993); *William Edwin Muir*, 27 ECAB 579, 581 (1976).

⁵ *See* 5 U.S.C. § 8107(c); *George E. Williams*, *supra* note 4.

⁶ *See Gordon G. McNeill*, 43 ECAB 140, 145 (1990); *Rozella L. Skinner*, 37 ECAB 398, 402 (1986).

⁷ *E.g.*, *Timothy J. McGuire*, 34 ECAB 189, 193 (1982).

⁸ *George E. Williams*, *supra* note 4; *Rozella L. Skinner*, *supra* note 6 at 402.

⁹ *George E. Williams*, *supra* note 4; *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

¹⁰ 5 U.S.C. §§ 8101(2) and (3).

¹¹ 20 C.F.R. § 10.400(e).

¹² *See, e.g.*, *Christine L. Kielb*, 35 ECAB 1060, 1061 (1984).

¹³ *Raymond F. Young*, 33 ECAB 1234, 1236 (1982).

As a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his opinion is of probative medical value only with regard to the spine.¹⁴

In the instant case, Dr. Boss' October 17, 1995 opinion that appellant had a 14 percent whole person impairment due to his April 5, 1995 spinal injury is not probative since schedule awards under the Act cannot be issued for back injuries or for impairments to the whole person. Further, Dr. Boss' opinion that 1 percent of appellant's 14 percent impairment was due to a sensory deficit in appellant's lower extremity is also not probative since that is beyond the scope of his expertise under the Act.¹⁵ Dr. Vazquez-Seoane's June 19, 1995 report is not probative because his seven percent "estimate" appeared to reference appellant's back and he did not use A.M.A., *Guides* in making his rating.¹⁶ As there is no other medical evidence addressing whether appellant has a work-related permanent impairment of a schedule member, the Office properly found that appellant was not entitled to a schedule award for impairment of a lower extremity.

The decision of the Office of Workers' Compensation Programs dated September 13, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 7, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹⁴ 5 U.S.C. § 8101(2) provides: "The term 'physician' includes chiropractors *only to the extent that* their reimbursable services are limited to treatment consisting of manual manipulation of the spine...." (Emphasis added.)

¹⁵ *Id.*

¹⁶ See *Paul R. Evans*, 44 ECAB 646, 651 (1993).