U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA H. PRIVETTE and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, NC

Docket No. 99-1936; Submitted on the Record;
Issued August 18, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant met her burden of proof to establish that she is entitled to a schedule award for permanent impairment of her lower extremities.

The Board finds that appellant did not meet her burden of proof to establish that she is entitled to a schedule award for permanent impairment of her lower extremities.

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,[2] including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.[3]

Section 8107 of the Act provides that if there is permanent impairment involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[4] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.[5]

---

[1] 5 U.S.C. §§ 8101-8193.

[2] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] 5 U.S.C. § 8107(a).

[5] *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

On July 18, 1996 appellant, then a 43-year-old mail carrier, sustained an employment-related L2 compression fracture.[6] She later claimed entitlement to a schedule award and, by decision dated February 25, 1999, the Office denied appellant's claim on the grounds that the medical evidence of record did not establish she was entitled to a schedule award.

In a report dated February 4, 1998, Dr. Charles L. Branch, Jr., an attending Board-certified neurosurgeon, stated that appellant had a "great recovery after a significant fracture of the L2 vertebral body" and did not have "any significant neurologic deficits associated with this."[7] Dr. Branch indicated that, according to the A.M.A., *Guides*, appellant had a 25 to 50 percent L2 compression fracture which constitutes a 7 percent impairment to the spine; fractured posterior elements which constitute a 5 percent impairment of the spine; and a reduced dislocation of a single vertebral body which constitutes a 6 percent impairment of the spine. He noted that combining these impairment values by using the Combined Values Chart rendered a total permanent impairment of 17 percent. However, Dr. Branch's February 4, 1998 report does not establish that appellant is entitled to a schedule award because a schedule award is not payable for the loss or loss of use, of a part of the body that is not specifically enumerated under the Act. Neither the Act nor its implementing regulations provides for a schedule award for impairment to the back, the spine or to the body as a whole. Furthermore, the back is specifically excluded from the definition of organ under the Act.[8]

In a report dated May 5, 1998, Dr. Branch indicated that appellant had a seven percent permanent impairment of her lower extremities. Dr. Branch stated:

> "Even though there is not dramatic neurologic dysfunction causing paralysis or major weakness, I believe it is only fair to say that [appellant] does have some limitation of the use of her lower extremities, that is a combination of pain, modest weakness and actually diminished stamina. Even though there is no perceptible atrophy of the lower extremities or weakness on isolated muscle testing, the loss of stamina or the ability to use muscles over a period of time is in fact a real and significant impairment."

Although Dr. Branch indicated that appellant had lower extremity impairment due to sensory loss and weakness, he did not adequately explain how such a determination was reached in accordance with the A.M.A., *Guides*. The A.M.A., *Guides* provides specific testing methods and standards for evaluating permanent impairment of the lower extremities associated with specific nerve distributions, but it is unclear whether Dr. Branch performed such testing or applied the relevant standards.[9] Dr. Branch provided only a nonspecific, generalized assessment of appellant's lower extremity pain and weakness and did not explain how he calculated a seven

[6] Appellant stopped work on July 18, 1996 and returned to limited-duty work in September 1996. On July 20, 1996 she underwent a posterior lumbar fixation of L1 through L3 which was authorized by the Office.

[7] The Office referred appellant to Dr. Branch for evaluation of permanent impairment.

[8] *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

[9] *See* A.M.A., *Guides* 48-49, 75-93.

percent impairment rating. Therefore, the opinion of Dr. Branch is of limited probative value regarding appellant's claimed entitlement to a schedule award.[10]

In a report dated January 27, 1999, an Office medical adviser determined that appellant did not have any permanent impairment which would entitle her to a schedule award. The Office medical adviser properly noted that the opinion of Dr. Branch was not reached in accordance with the relevant standards of the A.M.A., *Guides.* As the report of the Office medical adviser is the only opinion which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[11] Therefore, the Office properly relied on this opinion in denying appellant's claim for a schedule award.

The decision of the Office of Workers' Compensation Programs dated February 25, 1999 is affirmed.

Dated, Washington, D.C.
August 18, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[10] *See James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

[11] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).