

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

CONNIE L. BELL, Appellant)

and)

DEPARTMENT OF DEFENSE,)
DEFENSE COMMISSARY AGENCY,)
Fort Benning, GA, Employer)

**Docket No. 05-1333
Issued: August 23, 2005**

Appearances:
Connie L. Bell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 7, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated March 8, 2005, adjudicating her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant is entitled to a schedule award for her employment-related back injury.

FACTUAL HISTORY

This case was previously before the Board.¹ By decision dated September 2, 2003, the Board affirmed a January 8, 2003 Office decision that denied appellant's claim for a recurrence

¹ Docket No. 03-1364 (issued September 2, 2003). On January 6, 1998 appellant, a cashier, sustained a lumbar strain in the performance of duty when she lifted a bag of sweet potatoes.

of disability on November 14, 1998. The Board remanded the case for further development of her claim for an emotional condition.² The Board's September 2, 2003 decision is incorporated herein by reference.

On July 12, 2004 appellant filed a claim for a schedule award.

By letter dated August 26, 2004, the Office advised appellant that a schedule award was payable for permanent impairment of a lower extremity due to an accepted back condition but not for the back alone. She was advised to submit medical evidence if one or both of her lower extremities were impaired due to her accepted back condition.

In a September 27, 2004 report, Dr. Joseph R. Lewis, an attending family practitioner, stated that appellant had a lumbar spine syndrome with right leg radiculopathy, isolated right hip pain and major depression caused by her 1998 employment injury. He indicated that she had been totally disabled since 1998.³

By decision dated March 8, 2005, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish that she sustained permanent impairment to a scheduled member of her body due to her 1998 employment injury.⁴

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁵ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as "permanent impairment." 20 C.F.R. § 10.404 provides for compensation for loss or loss of use of additional scheduled members or functions of the body. 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.

A schedule award is not payable for the loss or loss of use of any member of the body or function that is not specifically enumerated in section 8107 of the Act or its implementing

² On June 16, 2004 the Office accepted a prolonged depressive reaction as being employment related.

³ The Board's September 2, 2003 decision reflects that appellant performed light duty from January 6 to 16, 1998, returned to regular work, stopped work again on March 1, 1998 and was released to return to limited duties on March 23, 1998.

⁴ Additional evidence was associated with the record subsequent to the March 8, 2005 decision. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board has no jurisdiction to consider this evidence for the first time on appeal.

⁵ 5 U.S.C. § 8107.

regulations.⁶ The back is specifically excluded from coverage of the schedule award provisions of the Act.⁷ Although a schedule award may not be issued for an impairment to the back under the Act, such an award may be payable for permanent impairment of the lower extremities that is due to an employment-related back condition.⁸

ANALYSIS

The medical evidence submitted in support of appellant's schedule award claim consisted of a September 27, 2004 report in which Dr. Lewis diagnosed a lumbar spine "syndrome" with right leg radiculopathy, isolated right hip pain⁹ and major depression caused by her 1998 employment injury. The Office has accepted the conditions of a lumbar strain and a depressive reaction as causally related to the January 6, 1998 employment injury. Although Dr. Lewis indicated that appellant had right leg radiculopathy causally related to the accepted 1998 lumbar strain, he did not provide any physical findings on examination or an opinion as to whether appellant had any permanent impairment of the right lower extremity. Therefore, his report is not sufficient to establish that she has any permanent impairment of the right lower extremity. Accordingly, the Office properly denied her claim for a schedule award.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an employment-related permanent impairment to her right lower extremity.

⁶ *Leroy M. Terska*, 53 ECAB 247 (2001).

⁷ 5 U.S.C. § 8101(19).

⁸ *Gordon G. McNeill*, 42 ECAB 140 (1990).

⁹ The Office has not accepted a hip condition as causally related to appellant's January 6, 1998 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 8, 2005 is affirmed.

Issued: August 23, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board