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

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| **CINDY M. HEBERT, Appellant** | ) | |
| **and** | ) | **Docket No. 05-854** |
| | ) | **Issued: July 22, 2005** |
| **U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer** | ) | |

*Appearances:*
*Cindy M. Hebert, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On March 1, 2005 appellant filed a timely appeal of a February 15, 2005 decision of the Office of Workers' Compensation Programs, finding that she was not entitled to a schedule award. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

### ***ISSUE***

The issue is whether appellant has established a ratable impairment to a scheduled member of the body under 5 U.S.C. § 8107.

### ***FACTUAL HISTORY***

On August 7, 2001 appellant, then a 33-year-old mail processor, filed a traumatic injury claim (Form CA-1), alleging that on August 6, 2001 she sustained a right shoulder injury while

casing mail. She returned to work in a light-duty position with intermittent disability.[1] The Office accepted the claim for neck sprain/strain, cervical intervertebral disc disorder with myelopathy, muscle spasm, brachia neuritis or radiculitis not otherwise specified.

In a report dated May 18, 2004, Dr. Rand Metoyer, an attending physician, diagnosed cervical radiculopathy and stated, "impairment rating 20 percent secondary to bilateral cervical radiculopathy." By letter dated September 29, 2004, the Office requested that he provide a medical opinion as to the degree of impairment to the upper extremities based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* In a report dated November 30, 2004, Dr. Metoyer noted tenderness throughout the cervical and interscapular region. He diagnosed chronic cervical radiculopathy with an impairment rating of 20 percent. Dr. Metoyer did not discuss the application of the A.M.A., *Guides* or identify the rating as applicable to the upper extremities.

In a decision dated February 15, 2005, the Office determined that the medical evidence was insufficient to establish a permanent impairment under the A.M.A., *Guides*.

## ***LEGAL PRECEDENT***

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability 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.[2] 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 has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[3] As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.[4]

[1] On appeal, appellant requested review of a June 2, 2004 decision. There is, however, no formal decision with appeal rights dated June 2, 2004. The record contains an informational letter dated June 2, 2004, which notes that appellant's certificate of marriage and claim for a schedule award was received and also stated, "you are not entitled to the eight hours of pay for doctor visits." She submitted a May 19, 2004 letter regarding compensation from September 9, 2003 to April 20, 2004. To the extent that there are issues regarding compensation, appellant may pursue these claims and secure a final decision with appeal rights from the Office. Presently, they are in an interlocutory posture and not before the Board on this appeal. *See* 20 C.F.R. § 501.2(c).

[2] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[3] *A. George Lampo*, 45 ECAB 441 (1994).

[4] FECA Bulletin No. 01-05 (issued January 29, 2001).

## ***ANALYSIS***

In order to establish entitlement to a schedule award, appellant must submit medical evidence with a detailed description of impairment to a scheduled member of the body.[5] The medical evidence from Dr. Metoyer does not provide a detailed description of a permanent impairment to the upper extremities. He diagnosed a cervical radiculopathy and provided brief descriptions on physical examination without providing additional information. Dr. Metoyer opined that appellant had a 20 percent impairment, but he did not refer to the A.M.A., *Guides* or explain how the impairment was calculated.[6] Moreover, he did not specify that his rating of impairment was applicable to the upper extremities rather than the spine.[7]

Appellant did not submit sufficient medical evidence to establish a permanent impairment to a scheduled member of the body. The Board accordingly finds that the Office properly determined that she is not entitled to a schedule award in this case.

## ***CONCLUSION***

The Board finds that appellant did not submit probative medical evidence with respect to impairment to her upper extremities and has not established entitlement to a schedule award.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

[6] Impairments for upper extremity peripheral nerve disorders are determined by identifying the affected nerve and applying the appropriate tables and figures under section 16.5. A.M.A., *Guides* 480-497.

[7] Neither the Act nor the implementing federal regulations provide for the payment of a schedule award for loss of use of the back or spine. *See Pamela J. Darling*, 49 ECAB 286 (1998). Under section 8107 of the Act a schedule award is payable for permanent impairment of the spine which affects the upper extremities.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 15, 2005 is affirmed.

Issued: July 22, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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