



fractures of the thoracic and lumbar spine, hemothorax, rib fracture, crushing thigh injury, paralytic iteus, lung contusion, unspecified pneumonia and coronary atherosclerosis. The Office paid appropriate compensation benefits and appellant returned to full-duty work with restrictions on November 11, 2005.

On July 24, 2006 appellant filed a claim for a schedule award. By letter dated July 27, 2006, the Office advised him of the evidence needed to support an impairment evaluation in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>1</sup> The Office advised appellant to specify the body part for which impairment was claimed. It also advised that only an impairment of a body part that is affected by damage to the nerves coming from the back may be claimed; not an award for the back itself.

Appellant submitted medical reports from Dr. Dennis P. McGowan, an orthopedic surgeon. In a November 11, 2005 report, Dr. McGowan noted that appellant was five months post reconstruction of an L1 fracture and possible T12-L1 dislocation and that examination revealed good range of motion of the back with an intact neurologic system. He released appellant to work with restrictions. In a June 23, 2006 report, Dr. McGowan advised that appellant was at maximum medical improvement and had full strength, an upright walk and an unremarkable nerve tension test. He released appellant to a regular exercise program and indicated that he should come back on a yearly basis.

By decision dated August 29, 2006, the Office denied appellant's claim for a schedule award.

On February 9, 2007 appellant requested reconsideration. He provided a list of job duties he could not effectively perform and a list of the symptoms he experiences on a daily basis since his work injury. Appellant advised that he was providing a copy of his job description; however, none was received into the record.

By decision dated March 2, 2007, the Office denied appellant's request for reconsideration.

### **LEGAL PRECEDENT -- ISSUE 1**

Under section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and section 10.404 of the implementing federal regulations,<sup>3</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

A.M.A., *Guides*<sup>4</sup> has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>5</sup>

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.<sup>6</sup> As neither the Act nor its regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole, no claimant is entitled to such a schedule award.<sup>7</sup> The Board notes that section 8109(19) specifically excludes the back from the definition of organ.<sup>8</sup> However, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine.<sup>9</sup>

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from his physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>10</sup>

A schedule award can be paid only for a condition related to an employment injury. 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.<sup>11</sup>

### ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained closed vertebral fractures of the thoracic and lumbar spine, hemothorax, rib fracture, crushing thigh injury, paralytic iteus, lung contusion, unspecified pneumonia and coronary atherosclerosis as a result of his June 9, 2005 work-related fall and authorized all appropriate medical procedures. Appellant filed a claim for a schedule award on July 24, 2006 and was advised by the Office to obtain an impairment determination pursuant to the A.M.A., *Guides*. As noted, the Act does not permit a schedule award for

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<sup>4</sup> A.M.A., *Guides*; *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>5</sup> *Id.*

<sup>6</sup> See *Joseph Lawrence, Jr.*, *supra* note 4; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989).

<sup>7</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>8</sup> 5 U.S.C. § 8107; see also *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

<sup>9</sup> 5 U.S.C. § 8109(c).

<sup>10</sup> *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

<sup>11</sup> *Veronica Williams*, 56 ECAB \_\_\_\_ (Docket No. 04-2120, issued February 23, 2005).

impairment to the back or spine. Appellant may receive a schedule award for impairment to the upper or lower extremities if such impairment is established as being due to his accepted back injuries.

On November 11, 2006 Dr. McGowan released appellant to work with restrictions. In a June 23, 2006 report, he determined that appellant reached maximum medical improvement and could be seen on a yearly basis. However, Dr. McGowan did not address the issue of impairment to a scheduled member of the body as a result of the June 9, 2005 work-related injury. He found that both the physical and neurologic examinations showed good results. There are no other medical reports of record which attribute any permanent impairment to a scheduled member of the body as a result of the June 9, 2005 work-related fall. The medical evidence of record does not establish that appellant sustained impairment to a scheduled member of the body as a result of the accepted injury. Consequently, appellant has not established entitlement to a schedule award for permanent impairment caused or aggravated by his accepted employment conditions.

### **LEGAL PRECEDENT -- ISSUE 2**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>12</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>13</sup>

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.<sup>14</sup> Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

Appellant requested reconsideration of the Office's August 29, 2006 decision on February 9, 2007. In his letter, he described his physical capabilities and symptoms since the work injury.

Appellant's statements do not address a legal argument or advance a point of law and therefore fail to meet the first and second standards of the Office's regulations. He has merely stated his belief that he is entitled to a schedule award because of his diminished physical

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<sup>12</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>13</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>14</sup> *Donna L. Shahin*, 55 ECAB 192 (2003).

<sup>15</sup> 20 C.F.R. § 10.608.

capabilities and ongoing symptoms since the work injury. However, the issue of impairment to a scheduled member is medical in nature and must be addressed by relevant medical evidence.<sup>16</sup> Appellant did not submit any medical evidence addressing his permanent impairment. He has not met the third standard of the Office's regulations and the Office was not required to reopen his claim for further consideration of the merits.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's claim for a schedule award. The Board further finds that the Office properly denied appellant's request for merit review.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 2, 2007 and the August 29, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 4, 2008  
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

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<sup>16</sup> *Jaja K. Asaramo*, 55 ECAB 200, 206 (2004).