

On July 20, 2004 appellant filed an occupational disease claim alleging that she developed arthritis and chronic pain in her back, knees and hips as a result of employment activities. The Office accepted the claim for left-sided sciatica. On August 3, 2004 appellant filed a traumatic injury claim, which was also accepted for left sciatica. On January 3, 2005 the

Office expanded appellant's claim to include aggravation of osteoarthritis of the lumbar spine and consolidated both claims under File No. 142032392.

Appellant requested a schedule award. She submitted an August 27, 2007 report from Dr. George R. Harper, a Board-certified orthopedic surgeon, who opined that appellant's work-related injury resulted in a six percent whole person impairment and that she had reached maximum medical improvement. Examination of the spine revealed limited range of motion. Appellant was able to forward flexion 45 degrees before experiencing discomfort. Lateral bending was 15 degrees to either side. Trunk rotation was markedly limited to 45 degrees to the right and 30 degrees to the left with the upper extremities in 80 percent of abduction. An orthopedic neurologic examination revealed knee and ankle deep tendon reflexes which were trace and symmetrical. Seated straight-leg raising was negative on the right at 90 degrees. On the left, appellant showed some sciatic stretch signs from her buttock to her popliteal area. Babinskis were down-going, and there was no clonus in either lower extremity. Dr. Harper found normal internal and external hip rotation, as well as normal range of motion in flexion, extension and abduction on the right side. On the left side, appellant had discomfort with abduction past 40 degrees, with pain referred to the area of the sacroiliac joint. Dr. Harper diagnosed lumbar degenerative disc disease with a disc bulge at the lumbosacral level, right side, and persistent symptoms of sciatica on the left side. Referring to section 15.3 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Harper applied the diagnosis-related estimate (DRE) to obtain a whole person spinal impairment rating. Noting that appellant had no objective findings to support her radicular complaints, he concluded that she was a DRE lumbar category II, according to Table 15-3 at page 384.¹ Dr. Harper opined that appellant had a six percent whole person impairment rating, which was at the lower end of the range provided.

The case record was referred to an Office medical adviser for an opinion as to the degree of appellant's impairment due to her accepted back condition. On October 1, 2007 the medical adviser noted that Dr. Harper had rated appellant based upon her spinal impairment, which was not accepted by the Office as a schedule member. Based upon Dr. Harper's report, he concluded that there were no lower extremity deficits related to the accepted spinal condition or any ratable impairment in this case. He found the date of maximum medical improvement to be August 27, 2007.

In a letter dated December 6, 2007, the Office asked Dr. Harper to clarify whether appellant had any permanent impairment to her lower extremities due to her accepted employment injuries. On December 12, 2007 Dr. Harper responded to the Office's request stating that there was no affected nerve root branch, no weakness or atrophy; and no ratable lower extremity impairment.

By decision dated March 14, 2008, the Office denied appellant's claim for a schedule award, on the grounds that she had no ratable lower extremity impairment.

¹ A.M.A., *Guides* 384, Table 15-3.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² provides for compensation to employees sustaining permanent impairment from loss, or 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 shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.³ 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.⁴

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulation.⁵ As neither the Act nor the regulation provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.⁶ However, as the Act makes provision for the lower extremities, a claimant may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originates in the spine, if the medical evidence establishes impairment as a result of the employment injury.⁷

ANALYSIS

The Board finds that the medical evidence fails to establish that appellant sustained any permanent impairment to a scheduled member of the body. The Office accepted appellant's claim for left sided sciatica and aggravation of osteoarthritis of the lumbar spine. Although appellant may not receive a schedule award for permanent impairment to her back,⁸ she may be entitled to a schedule award for any permanent impairment to her lower extremities, provided the medical evidence establishes such impairment.⁹ However, the medical evidence of record does not establish that she sustained permanent impairment to her legs due to the accepted back conditions.

Dr. Harper found that appellant had a six percent whole person impairment based upon her subjective complaints of radicular pain. The whole person impairment rating made by the

² 5 U.S.C. § 8107 *et seq.*

³ *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

⁴ *Arthur E. Anderson*, *supra* note 3 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁵ *Tania R. Keka*, 55 ECAB 354 (2004). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁶ *Tania R. Keka*, *supra* note 5. The Act itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19). *See also George E. Williams*, 44 ECAB 530 (1993).

⁷ *George E. Williams*, *supra* note 6.

⁸ 5 U.S.C. § 8101(19); *James E. Mills*, 43 ECAB 215 (1991).

⁹ *George E. Williams*, *supra* note 6.

physician with regard to appellant's back was not of a specific body member as listed under section 8107 of the Act. As noted, the Act does not authorize schedule awards for permanent impairment of the spine or for the whole person.¹⁰ Therefore, his opinion does not establish a ratable impairment to a schedule member. Moreover, Dr. Harper specifically found that appellant had no affected nerve root branch, no weakness or atrophy and no ratable lower extremity impairment.

The Office medical adviser properly reviewed the medical record and found no basis for rating impairment to a scheduled member of the body.¹¹ He noted that Dr. Harper's whole person rating, which was based on appellant's spinal impairment, was not in reference to a scheduled member of the body. The medical adviser properly concluded that there was no medical evidence of impairment to either lower extremity resulting from the accepted conditions and that, therefore, there was no ratable impairment in this case.

Appellant did not submit sufficient medical evidence to establish that she sustained a permanent impairment to a specified member, organ or function of the body listed in the Act or its implementing regulations. The medical evidence of record supports that she has no lower extremity impairment. The Board finds that appellant is not entitled to a schedule award as a result of her employment-related accepted back condition.

CONCLUSION

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

¹⁰ See *D.H.*, 58 ECAB ____ (Docket No. 06-2160, issued February 12, 2007). See also *Jesse Mendoza*, 54 ECAB 802 (2003). The Act provides at section 8101(20) that the brain, heart and back are excluded under the term organ. 5 U.S.C. § 8101(20).

¹¹ The Board notes that it is appropriate for an Office medical adviser to review the clinical findings of the treating physician to determine the permanent impairment. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.5(c) (March 1994); *Richard R. LeMay*, 56 ECAB 341 (2006).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 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