



In a December 7, 2007 report, Dr. Robert W. Elkins, an examining Board-certified orthopedic surgeon, concluded that appellant had a nine percent permanent impairment of the right lower extremity. He diagnosed resolved cervical sprain with negative neurological examination, minimal symptomatology and negative physical examination. Dr. Elkins found mild right sacroiliac joint dysfunction with fibular heat peroneal neuritis which caused some right lower extremity weakness and sensory loss. He noted that appellant had many more subjective complaints than objective findings. A physical examination revealed a negative cervical neurological examination. Dr. Elkins reported that appellant showed “some tenderness at the sacroiliac joint on the right side and some peroneal nerve irritation at the knee.” He noted it was “difficult to state whether her problems are coming from above, at her neck, or at the fibular head” and that “[t]he peroneal nerve is a branch of the sciatic nerve.” Using Table 16-10, page 482, Dr. Elkins concluded that appellant had a three percent sensory impairment to her right lower extremity and a six percent motor impairment for a moderate involvement of the peroneal nerve, which combined to total nine percent right lower extremity impairment. In reaching the 3 percent impairment rating, he found appellant had a 50 percent grade deficit which he multiplied by the maximum 5 percent. As to the 6 percent motor impairment motor, Dr. Elkins found appellant had a 25 percent grade deficit of the peroneal nerve which he multiplied by the maximum 25 percent.

On February 12, 2008 appellant filed a claim for a schedule award.

The case record was referred to an Office medical adviser for review. On January 25, 2008 the medical adviser stated that Dr. Elkins’ report was “simply not credible from a medical perspective.” He pointed out that, although Dr. Elkins found that appellant had a nine percent impairment of the right lower extremity due to an injury to the peroneal nerve, “this is not an accepted condition.” The medical adviser related that appellant “had mostly negative tests and examinations” and there was a lack of any objective findings. He concluded that appellant had no impairment of the right lower extremity.

In a letter dated January 28, 2008, the Office asked appellant to show the Office medical adviser’s opinion to Dr. Elkins for any comments as to whether he agreed.

In a letter dated March 26, 2008, appellant’s counsel requested the Office to issue a decision on the schedule award as appellant did not anticipate submitting additional medical evidence.

In a decision dated April 18, 2008, the Office denied appellant’s claim for a schedule award. It noted that the evidence was insufficient to establish that she sustained permanent impairment to a scheduled member due to her accepted work injury.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>1</sup> and its implementing federal regulations,<sup>2</sup> set forth the number of weeks of compensation payable to

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, 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 for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) as the uniform standard applicable to all claimants.<sup>3</sup> Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>4</sup>

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

### 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 her claim for neck and lumbar sprains and right-sided pinching sciatic nerve injury. Although appellant may not receive a schedule award for permanent impairment to her back,<sup>8</sup> she may be entitled to a schedule award for any permanent impairment to her lower extremities, provided the medical evidence establishes such impairment.<sup>9</sup> However, the Board finds that the medical evidence of record does not establish that she sustained permanent impairment to her legs due to the accepted back conditions.

The Office medical adviser properly reviewed the medical record and found no basis for rating impairment to a scheduled member of the body.<sup>10</sup> He noted that Dr. Elkins' opinion was "simply not credible from a medical perspective" and that a peroneal nerve injury, upon which the impairment rating was based, was not an accepted condition. The medical adviser related that appellant "had mostly negative tests and examinations." He properly concluded that there

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<sup>3</sup> 20 C.F.R. § 10.404(a).

<sup>4</sup> 20 C.F.R. § 10.404(a); *see Thomas P. Lavin*, 57 ECAB 353 (2006); *Jesse Mendoza*, 54 ECAB 802 (2003).

<sup>5</sup> *W.C.*, 59 ECAB \_\_\_ (Docket No. 07-2257, issued March 5, 2008); *Anna V. Burke*, 57 ECAB 521 (2006).

<sup>6</sup> *D.N.*, 59 ECAB \_\_\_ (Docket No. 07-1940, issued June 17, 2008).

<sup>7</sup> *J.Q.*, 59 ECAB \_\_\_ (Docket No. 06-2152, issued March 5, 2008).

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

<sup>9</sup> *George E. Williams*, 44 ECAB 530 (1993).

<sup>10</sup> 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).

was no medical evidence of impairment to either lower extremity resulting from the accepted conditions and 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 neck and lumbar sprains and right-sided pinching sciatic nerve injury.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 18, 2008 is affirmed.

Issued: February 5, 2009  
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