

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARRY W. McQUOWN and DEPARTMENT OF THE AIR FORCE,
AIR FORCE LOGISTICS COMMAND, TINKER AIR FORCE BASE, Okla.

*Docket No. 97-402; Submitted on the Record;
Issued July 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he has more than a five percent permanent impairment of his left lower extremity.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish that he has more than a five percent permanent impairment of his left lower extremity.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,² including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.³ Section 8107 of the 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.⁴ 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 of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

In the present case, the Office accepted that on June 16, 1983 appellant sustained employment-related herniated nuclei pulposus at L4-5 and L5-S1. By decision dated September 17, 1996, the Office granted appellant a schedule award for a five percent permanent impairment of his left lower extremity.

The Office based its schedule award on the August 26, 1996 report of the Office medical adviser. The Board has carefully reviewed this report and notes that the Office medical adviser properly applied the relevant standards of the A.M.A., *Guides* to determine that appellant has a 5 percent impairment of his left lower extremity which is comprised of a 1 percent rating due to sensory loss associated with the L5 nerve and a 4 percent rating due to motor loss associated with the L5 nerve.⁶ The Office medical adviser applied the standards of the A.M.A., *Guides* to the medical evidence of record which includes reports of Dr. Douglas L. Polk, an attending Board-certified neurosurgeon, and Dr. John F. Tompkins, a Board-certified orthopedic surgeon to whom the Office referred appellant.

In a report dated August 14, 1996, Dr. Tompkins indicated that, in addition to the 5 percent impairment of his left lower extremity, appellant had a 10 percent impairment of his back. However, a schedule award is not payable for the loss, or loss of use, of a part of the body that is not specifically enumerated under the Act. Neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of organ under the Act.⁷ In a November 15, 1995, Dr. Polk indicated that appellant had a 18 percent impairment of his entire body. The opinion of Dr. Polk is of limited probative value in that Dr. Polk failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.⁸ Moreover, a schedule award is not payable under section 8107 of the Act for an impairment of the whole person.⁹

As the report of the Office medical adviser provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.¹⁰

The decision of the Office of Workers' Compensation Programs dated September 17, 1996 is affirmed.

Dated, Washington, D.C.
July 10, 1998

⁶ See A.M.A., *Guides* 48-49, 130, Tables 11-12, 83.

⁷ *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

⁸ See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

⁹ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

¹⁰ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member