

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN H. SEA and U.S. POSTAL SERVICE,
POST OFFICE, Oak Lawn, IL

*Docket No. 00-230; Submitted on the Record;
Issued December 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant met his burden of proof to establish that he has permanent impairment of his upper extremities, which would entitle him to a schedule award.

The Board finds that appellant has not met his burden of proof to establish that he has permanent impairment of his upper extremities, which would entitle him to a schedule award.

On May 28, 1996 appellant, then a 49-year-old letter carrier, sustained an employment-related cervical strain and a disc herniation at C6-7. The Office of Workers' Compensation Programs authorized a discectomy and fusion at C6-7, which was performed in June 1996. Appellant sustained right vocal cord paralysis due to the surgery and the Office authorized surgical repair of his vocal cords. Appellant claimed that he had permanent impairment due to his employment injury, which would entitle him to a schedule award. By decision dated July 28, 1999, the Office denied appellant's claim on the grounds that the medical evidence did not show that he had permanent impairment, which would entitle him to a schedule award. The Office based its determination on the June 13, 1999 report of the Office medical adviser.

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

¹ 5 U.S.C. §§ 8101-8193.

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

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

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 has adopted the American Medical Association (A.M.A.), *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

In his June 13, 1999 report, the Office medical adviser properly determined that appellant did not have permanent impairment which would entitle him to a schedule award. He determined that there was no evidence of permanent impairment of appellant's upper extremities under the standards of the A.M.A., *Guides*. The Office medical adviser stated that although appellant exhibited some neck pain and decreased neck range of motion, the A.M.A., *Guides* did not provide for impairment ratings of the axial skeleton or whole person. He noted that appellant did not exhibit any weakness, sensory loss, or limited motion in his upper extremities.

The Office medical adviser evaluated the findings of Dr. Hilliard E. Slavick, a Board-certified neurologist to whom the Office referred appellant for evaluation of permanent impairment. In his May 23, 1999 report, Dr. Slavick indicated that appellant denied motor or sensory loss in his upper extremities and noted that he exhibited normal range of motion in his upper extremities. He stated that appellant also exhibited a 20 percent reduction of range of motion in his neck. Given the medical evidence of record, the Office medical adviser properly determined that appellant did not have a permanent impairment of his upper extremities, which would entitle him to a schedule award. The Office medical adviser correctly noted that a schedule award is not payable for impairment of the spine or the body as a whole.⁶

Prior to the referral to Dr. Slavick, the Office had requested that Dr. Leslie Schaffer, an attending Board-certified neurosurgeon, perform an evaluation of permanent impairment. However, Dr. Schaffer responded that he did not perform such evaluations. He referred appellant to Dr. Victoria K. Popela, an osteopath. In a report dated September 30, 1998, she indicated that appellant had limited motion of his cervical spine and noted that he had a 20 percent impairment of his left upper extremity. The opinion of Dr. Popela is of limited probative value in that she failed to provide an explanation of how her 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.⁷ As noted above, a schedule award is not payable for impairment of the spine and Dr. Popela did not explain how the findings justified a schedule award for permanent impairment of the upper extremities.

⁴ 5 U.S.C. § 8107(a).

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

⁶ *James E. Jenkins*, 39 ECAB 860, 866-67 (1990).

⁷ See *James Kennedy, Jr.*, *supra* note 5 (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).

As the report of the Office medical adviser provided the only evaluation, which conformed to the A.M.A., *Guides*, it constitutes the weight of the medical evidence.⁸

The decision of the Office of Workers' Compensation Programs dated July 28, 1999 is hereby affirmed.

Dated, Washington, DC
December 28, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

⁸ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).