

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD L. FALKENSTEIN and DEPARTMENT OF THE AIR FORCE,
U.S. AIR FORCE ACADEMY, Colo.

*Docket No. 96-2568; Submitted on the Record;
Issued August 4, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has more than a three percent impairment of the right upper extremity for which he has received a schedule award.

The Board has duly reviewed the case record and finds that appellant has not established that he has more than a three percent permanent loss or loss of use of the right upper extremity.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a library aide, sustained permanent aggravation of preexisting degenerative disc disease of the cervical spine as a result of lifting boxes of books on April 14, 1994. By decision dated July 19, 1994 the Office granted appellant a schedule award for a 3 percent permanent impairment of the right upper extremity.¹

Section 8107 of the Federal Employees' Compensation Act provides that if there is a permanent impairment 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.² 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 A.M.A., *Guides to the Evaluation of*

¹ The only decision on review before the Board is the July 19, 1996 schedule award determination. From the record it appears that at the time appellant filed his appeal before the Board the Office was determining appellant's entitlement to periods of disability wage-loss benefits prior and subsequent to the schedule award. As no final decision had been issued by the Office prior to the filing of this appeal regarding the issue of wage-loss compensation, the Board lacks jurisdiction over that issue. 20 C.F.R. § 501.2(c).

² 5 U.S.C. § 8107.

Permanent Impairment as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

In a report dated November 21, 1995, an Office second opinion physician, Dr. David C. Bachman a Board-certified orthopedic surgeon, reported that appellant had restrictions regarding the cervical spine, however, that regarding the upper extremities, appellant had equal reflexes, sensation and gross motor testing was normal, and appellant had no neurological impairment. On June 5, 1996 appellant underwent a physical examination for purposes of determining his entitlement to a schedule award by Dr. William J. Ciccone, also a Board-certified orthopedic surgeon. Dr. Ciccone evaluated appellant's cervical spine impairment and noted that appellant had slight weakness of grip of the right hand and a patchy sensory deficit along the extensor aspect of the right forearm and the dorsum of the right hand. On June 20, 1996 an Office medical adviser reviewed the case record and stated that pursuant to Dr. Ciccone's report, appellant had a "patchy sensory deficit – extension of the right forearm, and the dorsum of the right hand." The medical adviser stated that this would be from C6 and C7 nerve root impairments which were (per table 13 of the A.M.A., *Guides*) ratable at maximum 8 percent and 5 percent impairments, for a total maximum impairment value of 13 percent. The medical adviser explained that the degree of impairment, by appellant's description, would be a grade 2 thus would be graded as 25 percent of the maximum allowable. The 13 percent impairment multiplied by the grade of 25 percent would equal a right arm impairment of 3 percent. The medical adviser properly utilized the *Guides* to determine appellant's impairment of the right upper extremity due to his cervical nerve root impairments. Table 13 of the *Guides*⁴ does indicate that the maximum percentage upper extremity impairment due to sensory deficit or pain of C6 is 8 percent and C7 is 5 percent. Table 11 also provides that a grade 2 impairment, which entails decreased sensitivity with or without abnormal sensation or pain which is forgotten during activity, allows for a maximum 25 percent sensory deficit. The Board affirms the Office medical adviser's finding that 25 percent of 8 is 3 percent, and appellant therefore has a 3 percent permanent impairment of the right upper extremity.

Finally, the medical adviser noted that appellant had no other ratable impairment, although Dr. Ciccone's report dealt in detail with impairment of appellant's cervical spine. A schedule award is not payable for the loss, or loss of use, of a part of the body not specifically enumerated in the Act.⁵ Neither the Act nor its regulations⁶ provide 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 As the cervical spine is part of the "back," and is not a part of the body specifically enumerated in the Act, no schedule award is payable for impairment of the cervical spine. As the upper extremities are enumerated in the schedule award

³ *James J. Hjort*, 45 ECAB 595 (1994).

⁴ Fourth Edition, page 51.

⁵ *James E. Jenkins*, 39 ECAB 860 (1988).

⁶ 20 C.F.R. § 10.304.

⁷ 5 U.S.C. § 8101(20).

provision of the Act, an impairment to the upper extremity is compensable even if it originates from the injury to a nonscheduled member such as the cervical spine. The evidence of record does not establish that appellant is entitled to a greater schedule award.

The decision of the Office of Workers' Compensation Programs dated July 19, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 4, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member