

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN E. WALLACE and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Oklahoma City, Okla.

*Docket No. 97-2150; Submitted on the Record;
Issued April 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a schedule award.

In the present case, the Office has accepted that appellant, a clerk, sustained temporary aggravation of a preexisting thoracic strain on July 27, 1994 when she was stroked on the back with a mop handle. On July 6, 1995 appellant requested payment of a schedule award. In support of her request for a schedule award, appellant submitted a June 20, 1995 report from her treating physician, Dr. Glenn Smith, who opined that appellant had a 40 percent permanent disability "due to pain and discomfort in the lumbosacral plexus into both lower extremities." By decision dated December 26, 1995, the Office denied appellant's claim for a schedule award on the grounds that section 8107 of the Federal Employees' Compensation Act did not provide for a schedule award for the accepted condition.

Appellant thereafter requested a hearing before an Office hearing representative. During the hearing held on December 17, 1996, the Office hearing representative issued a decision finding that based upon appellant's testimony and the evidence of record, the Office had not addressed the question of permanent impairment of appellant's lower extremities. The hearing representative stated that the Office should release a development letter to appellant outlining the specific information that her treating physician should address in order for the Office to evaluate whether she was entitled to a schedule award. On February 28, 1997 the Office claims examiner wrote to Dr. Smith regarding appellant's "work-related lower back condition which may also be impairing one or both lower extremities." The claims examiner noted the Office was interested in determining if appellant had any impairment of the lower extremities due to job-related spinal pathology. Dr. Smith was requested to use the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, specifically Table 83, and Tables 11 and 12 to determine the degree of lower extremity impairment.

On April 16, 1997 the Office denied appellant's claim for a schedule award. The decision noted that, pursuant to the hearing representative's December 17, 1996 decision, a request was made to Dr. Smith for an opinion regarding any permanent work-related impairment of appellant's lower extremities. The decision found that no further medical documentation of permanent impairment had been received; therefore, appellant had not met her burden of proof.

The record indicates that on April 14, 1997 the Office did receive a report from Dr. Smith, dated June 20, 1995, "amended April 8, 1997," which was placed in the case record some time after April 14, 1997. In this April 8, 1997 amended report, Dr. Smith stated that appellant had a permanent disability of 40 percent due to pain and discomfort in the lumbosacral plexus into both lower extremities. He opined that appellant had a 20 percent disability to each leg due to radioculopathy. He noted that his evaluation was based upon the A.M.A., *Guides*, Table 70, page 108.

By letter dated May 20, 1997, the Office advised appellant that, although the medical report from Dr. Smith's amended April 8, 1997 was received in the Office on April 14, 1997, it was not associated with the file until after the April 16, 1997 decision. The claims examiner stated that the impairment rating was for a lumbosacral condition, but the case had been accepted for an aggravation of a preexisting thoracic strain; therefore, it did not answer the letter dated February 28, 1997.

The Board finds that this case is not in posture for decision.

The schedule award provisions of the Act¹ set forth the number of weeks of compensation to be paid for permanent loss of use of the members listed in the schedule. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determinations is a matter which rests in the sound discretion of the Office. However, as a matter of administrative practice and to ensure consistent results to all claimants, the Office has adopted and the Board has approved the A.M.A., *Guides* as the uniform standard applicable to all claimants.²

No schedule award is payable for a member, function, or organ of the body not specified in the Act or in the implementing regulations.³ As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.⁴

In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the

¹ 5 U.S.C. § 8107.

² *Jimmy B. Newell*, 39 ECAB 181 (1987).

³ *George E. Williams*, 44 ECAB 530 (1993).

⁴ *Id.*

schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originated in the spine.⁵

In the present case, the Office has accepted that appellant sustained a temporary aggravation of a preexisting thoracic strain as a result of an injury occurring at work on July 27, 1994. An Office hearing representative found that the evidence of record was sufficient to further develop the claim to determine whether appellant sustained a permanent impairment to her lower extremities as a result of this injury, which would entitle her to a schedule award. The Office requested on February 28, 1997 that Dr. Smith provide an evaluation of appellant's lower extremity impairment. The Board finds that the Office did not properly outline the medical issues, so that Dr. Smith could provide an appropriate response, and the Office could thereafter determine whether appellant in fact had a compensable permanent impairment of the lower extremities arising from the accepted injury. As the Office has accepted a temporary aggravation of thoracic strain, the Office shall obtain a medical opinion as to whether appellant sustained a permanent impairment of her lower extremities arising from the accepted temporary thoracic condition. The Office shall also obtain an evaluation of permanent impairment of appellant's lower extremities pursuant to the A.M.A., *Guides*. After such further development of the evidence as necessary, the Office shall issue an appropriate decision as to whether appellant has a permanent impairment of the lower extremity arising from the accepted injury.

The decision of the Office of Workers' Compensation Programs dated April 16, 1997 is hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
April 5, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁵ *Rozella L. Skinner*, 37 ECAB 398 (1986).