

U. S. DEPARTMENT OF LABOR  
Employees' Compensation Appeals Board

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In the Matter of RODGER PATTERSON and DEPARTMENT OF THE ARMY,  
RED RIVER ARMY DEPOT, Texarkana, Tex.

*Docket No. 97-1359; Submitted on the Record;  
Issued June 25, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

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

The Office accepted that appellant sustained a herniated disc at C5-6 in an employment injury sustained on March 23, 1990. The Office authorized two surgeries on appellant's neck, an anterior fusion performed on February 21, 1995 and a posterior fusion performed on May 30, 1996, both at C5-6. The Office also paid appellant compensation for disability for all time he missed from work until his return to his regular duties on January 20, 1997.

On January 21, 1997 appellant filed a claim for a schedule award. By decision dated February 5, 1997, the Office denied appellant's claim for a schedule award on the basis that section 8107 of the Federal Employees' Compensation Act<sup>1</sup> did not provide for a schedule award for the accepted condition.

The schedule award provision of the Act, section 8107, provides for payment of compensation to employees sustaining permanent impairment from loss, or loss of use, of specified members of the body. 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.<sup>2</sup> There is no provision in the Act or its regulation on schedule awards<sup>3</sup> for payment of 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.<sup>4</sup>

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

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *James E. Jenkins*, 39 ECAB 860 (1988).

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> 5 U.S.C. § 8101(19).

In a report dated November 4, 1996, Dr. John H. Pelozza, the Board-certified orthopedic surgeon, who performed the surgeries on appellant's neck, stated that appellant had reached maximum medical improvement, and that a functional capacities evaluation indicated appellant has a 17 percent total body impairment. A review of this functional capacities evaluation, which was done by a licensed physical therapist on September 17, 1996 shows that the 17 percent whole person permanent impairment was predicated solely on appellant's surgeries and his loss of motion of the neck. As noted above, a schedule award is not payable under the Act for a permanent impairment of the neck.

A schedule award is payable for a permanent impairment of the arms that is due to an employment-related neck condition,<sup>5</sup> but the medical evidence does not show that appellant has a permanent impairment of either arm. In a report dated June 11, 1996, Dr. Pelozza stated that appellant's "arm pain and paresthesias are gone." In a report dated December 11, 1996, Dr. Michael R. Seals stated that his examination of appellant on that date showed good motor strength in all four extremities, normal sensation, symmetrically normal reflexes and no evidence of injury to the peripheral nerve roots. There is no medical evidence that appellant has a permanent impairment of the arms or of any member of the body enumerated in the Act.

The decision of the Office of Workers' Compensation Programs dated February 5, 1997 is affirmed.

Dated, Washington, D.C.  
June 25, 1999

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> *Rozella L. Skinner*, 37 ECAB 398 (1986).