

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY ANN MAHAY and U.S. POSTAL SERVICE,
POST OFFICE, Alameda, CA

*Docket No. 99-1286; Submitted on the Record;
Issued December 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a three percent impairment to her right leg for which she received a schedule award.

On March 26, 1987 appellant, then a 44-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation, alleging that on March 26, 1987, she sustained an injury to her lower back when she was lifting a tray of flats. On April 15, 1987 the Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain with mild disc derangement.

On June 25, 1997 appellant filed a claim for a schedule award for the March 26, 1987 injury. By decision dated February 1, 1999, the Office awarded appellant compensation under the schedule based on a three percent loss of use of the right leg.

The Board has duly reviewed the record and finds that appellant has no more than the three percent impairment of her right leg for which she received a schedule award.

In a medical report dated August 31, 1998, Dr. Bowen Y. Wong, a Board-certified neurologist and appellant's treating physician, noted that he reviewed his "extremely extensive" records on appellant, which dated back to 1991. Dr. Wong stated that appellant's disability and permanent impairment were present prior to her first visit with him and she had no further functional restoration while in his care. He noted:

"Throughout her entire course, she has always had right leg symptoms in association with back pain. However, her MRI [magnetic resonance imaging] fails to demonstrate a lesion that would adequately explain her radiating symptoms. Nevertheless, she does have radiating pain in her right leg. Her pain symptoms are moderate in intensity in her right leg. Clinically, her symptoms suggest a right L4 nerve root although there are no hard objective clinical or MRI changes to indicate an L4 radiculopathy."

In response to questions propounded by the Office, Dr. Wong stated that the specific nerve root origin and branch affected was right L4, that she suffered from moderate back pain with radiation to her right leg and that there was no weakness or atrophy. On a scale of zero to five, Dr. Wong graded appellant as a “five,” *i.e.*, “active movement against gravity with full resistance.”

Dr. Wong’s report was reviewed by the Office medical adviser in order to set appellant’s rate of impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). The Office medical adviser also reviewed other records, “including recommendations for restricted activities, a lumbosacral support, various oral medications and injections of steroids.” In a report dated October 10, 1998, he noted that as appellant’s symptoms correlate with the right L4 nerve root, which is assessed at a five percent impairment in the A.M.A., *Guides*.¹ In order to determine the level of deficit, the Office medical adviser determined that appellant would be assessed at a maximum grade of level 3 based on the sensory deficit table,² which would be a maximum of 60 percent sensory deficit. The Office medical adviser then multiplied these two figures together,³ and determined that appellant had a three percent impairment of the right lower extremity for pain factors.⁴ The Office medical adviser properly reviewed the medical evidence of record, and applied the proper A.M.A., *Guides* to arrive at this conclusion, upon which the Office relied in reaching its decision that appellant had no more than a three percent loss of the right leg.

With regard to appellant’s comments about her back, this Board has explained that 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 compensation schedule of the Federal Employees’ Compensation Act⁵ or under its implementing regulations.⁶ Neither the Act nor its implementing federal regulations provides for a schedule award for impairment to the back or to the body as a whole.⁷

¹ A.M.A., *Guides*, 130, Table 83.

² A.M.A., *Guides*, 48, Table 11.

³ A.M.A., *Guides*, 130.

⁴ The Office medical adviser noted that the record did not document any loss of motion of the right hip, right knee, right ankle or right subtalar joints, for a zero percent impairment. He also noted that the records described no atrophy or weakness for a zero percent impairment.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.304(b).

⁷ *Terry E. Mills*, 47 ECAB 309 (1996); *James E. Mills*, 43 ECAB 215 (1991).

The decision of the Office of Workers' Compensation Programs dated February 1, 1999 is hereby affirmed.

Dated, Washington, DC
December 11, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member