

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY J. SVEC, SR. and DEPARTMENT OF THE AIR FORCE,  
KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 99-2039; Submitted on the Record;  
Issued September 12, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award under 5 U.S.C. § 8107(a) and (b).

On September 3, 1996 appellant, then a 45-year-old logistics management specialist, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left leg and hip when he slipped on a wet floor and fell, twisting his left leg and hip.

To support his claim, appellant submitted progress notes and reports from Dr. Laura Torres-Reyes, Board-certified in occupational medicine, dated September 3 to 10, 1996. In her notes dated September 3, 1996, Dr. Torres-Reyes discussed appellant's September 3, 1996 employment injury and diagnosed lumbar strain and spasm. In her notes dated September 10, 1996, she diagnosed sciatic nerve irritation. In her report dated September 3, 1996, Dr. Torres-Reyes indicated by check mark that appellant was restricted to temporary limited duty and could not lift greater than 10 pounds, climb stairs or ladders or stand for prolonged periods. In a second report dated September 3, 1996, she diagnosed lumbar strain and muscle spasm. Appellant also submitted a report from Dr. Joe Tippet, a Board-certified orthopedic surgeon, dated October 23, 1996. In his report, Dr. Tippet diagnosed trochanteric bursitis. Appellant further submitted a duty status report (Form CA-17) dated September 25, 1996 from a physician whose signature is illegible. The doctor diagnosed trochanteric bursitis and indicated by check mark that appellant could return to work on September 26, 1996 without restrictions.

On January 28, 1997 appellant filed a recurrence of disability claim (Form CA-2a) alleging that he sustained a recurrence of his September 3, 1996 employment injury on January 20, 1997. He alleged that, since returning to work, after his September 3, 1996 employment injury, he experienced intermittent pain in his left hip after long periods of walking and standing. Appellant also noted that prior to his September 3, 1996 employment injury he had no hip problems and was physically active.

By letter dated April 16, 1997, the Office advised appellant that it accepted his traumatic injury claim for lumbar strain. By letter dated April 16, 1999, the Office notified appellant that his case would remain open for medical care relating to his January 20, 1997 recurrence of disability.

On January 11, 1999 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) for a schedule award.

In support of his claim, appellant submitted progress reports from Dr. Sergio Viroslav, a Board-certified orthopedic surgeon, dated August 31, 1998. In his reports, Dr. Viroslav noted appellant's symptoms and treatment plan relating to his lumbar condition. Appellant also submitted an attending physician's report (Form CA-20) from Dr. Viroslav dated January 5, 1999. In his report, Dr. Viroslav diagnosed spinal stenosis and limited motion and noted appellant's treatment plan. By check mark, he indicated that appellant's condition was aggravated by an employment injury because his symptoms worsened after his fall.

Appellant further submitted a magnetic resonance imaging (MRI) scan dated September 18, 1998 from Dr. James E. Remkus, a Board-certified internist, diagnostic radiologist and cardiovascular disease physician. In his report, Dr. Remkus noted the following diagnoses: (1) developmental narrowing of the spinal canal; (2) moderate degenerative disc disease with mild diffuse disc bulge and bilateral facet joint arthrosis at L2-3; (3) diffuse disc bulge with central canal stenosis at L3-4; and (4) bilateral facet joint arthrosis with mild bilateral foraminal narrowing at L3-4 and L4-5. Additionally, appellant submitted physical therapy notes dated October 13 to 15, 1998.

By letter dated January 28, 1999, the Office advised Dr. Viroslav that it needed additional medical evidence. The Office requested a report, based on a current examination, including the date appellant reached maximum medical improvement, objective findings, subjective complaints and diagnoses of conditions affecting appellant's lower extremities.

Appellant submitted reports from Dr. Fernando T. Avila, a Board-certified anesthesiologist, dated February 26 to March 30, 1999. In his report dated February 26, 1999, Dr. Avila stated: "[Appellant] has increased tone of the lumbar paravertebral muscles; 2+ DTR throughout; SLR and Lasegue's negative on the right, positive on the left; pulses 2+ throughout." He diagnosed lumbosacral radiculopathy. In his report dated March 5, 1999, Dr. Avila described the lumbar epidurogram with interpretation and epidural steroid injection at L4-5 procedure performed on appellant and bilateral facet injections at L2-3, L3-4, L4-5 and L5-S. In his report dated March 12, 1999, Dr. Avila described the lumbar epidurogram with interpretation and epidural steroid injection at L5-S1 procedure and a left sacroiliac joint injection procedure performed on appellant. In his report dated March 24, 1999, he again diagnosed lumbosacral radiculopathy. In his report dated March 30, 1999, Dr. Avila noted that appellant was not experiencing any lower back pain.

By decision dated May 4, 1999, the Office denied appellant's claim for a schedule award on the grounds that the evidence of record did not show that appellant's alleged impairment involved a member or function of the body covered by section 8107 of the Federal Employees'

Compensation Act.<sup>1</sup> The Office specifically noted that appellant's lumbar strain was not covered under the Act's schedule award provisions.

On appeal appellant alleges that his lumbar strain caused a five percent impairment to his left lower extremity

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

The schedule award provisions of the Act<sup>2</sup> and its implementing regulation<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. The Act, however, does not specify the manner in which the percentage loss 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 for all claimants, the Office has adopted and the Board has approved, the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>4</sup> as the uniform standard applicable to all claimants.<sup>5</sup>

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.<sup>6</sup> As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back,<sup>7</sup> no claimant is entitled to such an award.<sup>8</sup>

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 schedule or nonschedule member. As the schedule award provisions of the Act include extremities, a claimant may be entitled to a schedule award for permanent impairment even the cause of the impairment originated in the spine.<sup>9</sup>

In the present case, appellant is not entitled to a schedule award as the record is devoid of medical evidence showing that appellant sustained a permanent impairment to any schedule member of his body relating to lumbar strain, the condition accepted by the Office. Dr. Torres-

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 5 U.S.C. § 8107(c).

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (3<sup>d</sup> ed. 1993).

<sup>5</sup> *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

<sup>6</sup> *George E. Williams*, 44 ECAB 530, 533 (1993).

<sup>7</sup> 5 U.S.C. § 8181(19).

<sup>8</sup> See *George E. Williams*, *supra* note 6.

<sup>9</sup> *Id.*

Reyes' notes and reports, dated September 3 to 10, 1996, diagnosed lumbar strain, muscle spasm and sciatic nerve irritation but she did not find that appellant sustained a permanent impairment to a member of the body covered by the Act's schedule award provisions. In his report dated October 23, 1996, Dr. Tippet diagnosed trochanteric bursitis but he did not relate it to appellant's accepted work-related condition or find that appellant sustained permanent impairment according to the A.M.A., *Guides*. Similarly, Dr. Viroslav noted left buttock, thigh, and trochanteric buttock pain and diagnosed spinal stenosis in his reports dated August 31, 1998 to April 2, 1999, but he neither stated that appellant sustained permanent impairment of the left lower extremity relating to his accepted work-related lumbar condition nor did he evaluate appellant's condition according to the A.M.A., *Guides*. Dr. Remkus' September 18, 1998 MRI scan also failed to identify a permanent impairment. Dr. Avila's reports, dated February 26 to March 30, 1999, diagnosed lumsosacral radiculopathy but did not find that appellant sustained permanent disability of any member of the body relating that diagnosis. As the evidence of record fails to show that appellant sustained a permanent impairment to a member of the body which is included in the Act's schedule of compensable members, he is not entitled to receive a schedule award.

The decision of the Office of Workers' Compensation Programs dated May 4, 1999 is affirmed.

Dated, Washington, DC  
September 12, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member