

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUTHANNE EWING and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Cleveland, OH

*Docket No. 00-1301; Submitted on the Record;  
Issued April 4, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to receive a schedule award for permanent impairment of her lower extremities.

On June 3, 1996 appellant, then a 23-year-old mail processor, filed a traumatic injury claim alleging that on that date she felt severe back and leg pain when she squatted to push a gate into place. She stopped work on June 4 1996 and returned to full duty on June 21, 1996. The Office of Workers' Compensation Programs accepted appellant's claim for a back sprain with spasms.

On July 8, 1996 appellant filed a recurrence of disability claim alleging that her back was feeling "a little better" but she experienced periodic pain. Appellant stated that she was working 10 hours a day and that her back "couldn't handle it." She stopped work on July 5, 1996.

On September 24, 1996 appellant filed a second recurrence of disability claim alleging that she could work only a regular 40 hours a week and that overtime work made her back sore. Appellant stopped work on September 19, 1996. The Office accepted appellant's recurrence claim. On December 6, 1996 appellant underwent authorized posterior interbody fusion with strut screws and plates surgery.

By decision dated February 19, 1997, the Office accepted that appellant sustained an aggravation of Grade I spondylolisthesis causally related to her June 3, 1996 employment injury.

By letters dated November 6, 1997 and December 24, 1998, appellant, through her attorney, requested that the Office determine whether she was entitled to a schedule award.

By letter dated December 30, 1998, the Office requested that Dr. Abdul L. Itani, appellant's treating Board-certified neurosurgeon, submit a report on whether appellant's accepted work-related back condition was impairing one or both of her lower extremities. The Office advised Dr. Itani of the proper method for quantifying permanent impairment using the

American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>1</sup> (hereinafter A.M.A., *Guides*) and requested that he rate appellant's impairment of the lower extremities due to spinal pathology.

In a progress note dated January 20, 1999, Dr. Itani diagnosed Grade I spondylolisthesis at L5-S1 and opined that appellant's back was well healed following surgery. Dr. Itani stated:

"Back movements are full in all directions. Motor examination revealed no atrophy or fasciculations. The tone is normal. There is no motor power deficit in any muscle group. Knee and ankle jerks are 1+, straight leg raising full. On sensory examination the patient claims diminished response to pin throughout the left lower extremity."

By letter dated February 18, 1999, Dr. Itani recommended that appellant's permanent impairment evaluation be performed by an occupational medicine specialist. In a letter dated February 23, 1999, the Office requested that Dr. Itani refer appellant to an appropriate specialist for an impairment evaluation.

In a report dated April 1, 1999, Dr. Anthony M. George, Board-certified in public health and preventive medicine, provided a history of appellant's condition, objective findings and subjective complaints. Dr. George diagnosed lumbosacral strain and lumbar sprain with persistent weakness and spasms and spondylolysis status postherniated disc surgical repair. He found that appellant's range of motion, flexibility and sensory functioning were within normal limits and that she had reached maximum medical improvement on November 22, 1997. Regarding the issue of permanent impairment, Dr. George stated:

"As stated above, the above injury has secondary spasms which are causing a "pinched nerve" or in medical terms, peripheral muscle spasm causing sciatica. Since [appellant's] history does not have a specific rehabilitation program, she states she does not recall having had aggressive lumbar extension strengthening, I would not state that these symptoms would have to be identified as a permanent impairment and a home exercise plan might alleviate these symptoms."

In a report dated April 27, 1999, the Office medical adviser indicated that he reviewed the medical evidence of record and concluded that appellant did not sustain permanent impairment. He noted that appellant had full range of motion in her lower extremities, normal motor strength and an intact sensory examination. He stated: "I can find no documented evidence of permanent partial impairment. Dr. Itani notes that there is some mild residual discomfort but she works as a hairdresser and the pain responds to Ibuprofen."

By decision dated April 29, 1999, the Office denied appellant's schedule award claim on the grounds that the reports from Dr. George and the Office medical adviser did not find any

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<sup>1</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993).

impairment of a scheduled member or function of the body as set forth in section 8107 of the Federal Employees' Compensation Act.<sup>2</sup>

By letter dated May 17, 1999, appellant, through her attorney, requested an oral hearing, which was held on September 21, 1999.

By decision dated December 28, 1999, the hearing representative affirmed the Office's April 29, 1999 decision on the grounds that the weight of the medical evidence did not show that appellant sustained permanent impairment.

The Board finds that appellant is not entitled to receive a schedule award for permanent impairment.

The schedule award provision of the Act<sup>3</sup> and its implementing regulations<sup>4</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. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating scheduled losses.<sup>5</sup> While a schedule award is not payable under the Act for an impairment of the back, a schedule award is payable for a permanent impairment of the legs that is due to an employment-related back condition.<sup>6</sup>

In his report dated April 1, 1999, Dr. George indicated that he thoroughly examined appellant and noted that her flexibility and range of motion were within normal limits. His examination revealed spasms that may have resulted in "pinched nerves" in appellant's lower extremities, but Dr. George concluded that "[he] would not state that these symptoms would have to be identified as a permanent impairment." He did not refer to the A.M.A., *Guides* or conclude that appellant had a permanent impairment. Furthermore, the Office medical adviser found that, based on Dr. Itani's progress note and Dr. George's report, there was no medical evidence showing that appellant was permanently impaired. As the relevant medical evidence of record fails to establish that appellant is permanently impaired, she is not entitled to receive a schedule award.

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 5 U.S.C. § 8107(c).

<sup>4</sup> 20 C.F.R. § 10.404.

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

<sup>6</sup> *Denise D. Cason*, 48 ECAB 530-31 (1997); *S. Gordon McNeil*, 42 ECAB 140 (1990).

The decisions of the Office of Workers' Compensation Programs dated December 28 and April 29, 1999 are hereby affirmed.

Dated, Washington, DC  
April 4, 2001

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member