

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE S. HARRIS and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 02-203; Submitted on the Record;
Issued October 4, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established a permanent impairment entitling her to a schedule award under 5 U.S.C. § 8107.

The Office of Workers' Compensation Programs accepted that on July 29, 1995 appellant, then a 32-year-old distribution clerk sustained a low back strain, left ankle strain, cervical strain and left leg reflex sympathetic dystrophy when a container that jumped a tow-line struck her from behind at work.¹

On July 14, 2000 appellant filed a claim for a schedule award related to the July 29, 1995 injury. By decision dated October 18, 2000, the Office issued a schedule award for a 36 percent permanent impairment of the left lower extremity.

Appellant disagreed with the schedule award and requested an oral hearing on January 23, 2001.² A hearing was set for June 26, 2001. In a subsequent letter dated May 31, 2001, appellant requested that the hearing be cancelled and that the Office alternatively respond to her request for a schedule award of 50 percent impairment based on her mental condition. She argued that the Office had authorized treatment of her mental behavior disorder since September 1995 and payment for her prescription of Zoloft, an antidepressant medication for over five years.

¹ The Board notes that appellant has filed other workers' compensation claims including a claim for bilateral carpal tunnel syndrome of December 14, 1999, a recurrence of the employment-related condition of July 29, 1995 injury on September 4, 2000 and an alleged injury on October 9, 2000 causally related to employment factors.

² The record reflects that appellant initially requested an oral hearing on October 20, 2000; however, the appropriate Office did not receive the request until December 14, 2000. In a letter dated November 21, 2000, the Office noted that appellant's case file had been transferred to the Branch of Hearings and Review; however, it did not have evidence that appellant requested a hearing so the file was returned to the district Office.

In a letter dated June 5, 2001, an Office hearing representative advised appellant that the May 31, 2001 hearing had been cancelled. The Office hearing representative further responded that the Federal Employees' Compensation Act does not provide for the issuance of impairment ratings for emotional conditions.

In a letter to the Office dated July 5, 2001, appellant requested an appeal of the finding regarding schedule awards for emotional conditions in the June 5, 2001 Office letter. The Office thereafter determined that the case was not in posture for decision because the Office hearing representative's June 5, 2001 letter did not include appeal rights. The Office conducted a formal review of the written record consistent with appellant's May 31, 2001 request for review.

By decision dated September 24, 2001, an Office hearing representative denied appellant's request for a schedule award. The Office acknowledged that it had authorized payment for the antidepressant medication Zoloft, which the hearing representative indicated, implied an emotional condition component to the physical injury accepted by the Office. The Office hearing representative determined, however, that the Act does not provide for a schedule award for emotional conditions and consequently denied appellant's request.

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

Section 8107 of the Act³ provides that, if there is a permanent disability involving the loss or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating scheduled losses.⁵

As noted above, the schedule award provisions under the Act are limited to specific members or functions of the body enumerated under 5 U.S.C. § 8107 and its implementing regulation. A schedule award is not payable for loss or loss of use, of any member of the body not specifically enumerated,⁶ nor is it payable for the body as a whole.⁷ In this case, appellant argued that she should be entitled to a schedule award for her mental behavior disorder. The Board notes that although the Office has not accepted that appellant has developed an emotional condition related to the July 29, 1995 employment injury, medical reports of record discuss

³ 5 U.S.C. § 8107(c).

⁴ *Id.* This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid. Additional members of the body are found at 20 C.F.R. § 10.404.

⁵ 20 C.F.R. § 10.404.

⁶ *Thomas E. Stubbs*, 40 ECAB 647 (1989).

⁷ *James E. Mills*, 43 ECAB 215 (1991).

treatment for an emotional condition and the Office has approved an antidepressant medication related to the accepted condition. Notwithstanding, the Act does not provide for a schedule award for emotional conditions.⁸ Appellant therefore, is not entitled to a schedule award for an emotional condition in this case.⁹

The September 24, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 4, 2002

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ *Ann L. Tague*, 49 ECAB 453 (1998).

⁹ On October 18, 2001 appellant filed the current appeal of the Office's September 24, 2001 decision with the Board. The record reflects that appellant also requested reconsideration with the Office of the September 24, 2001 decision. The Office and the Board may not have simultaneous jurisdiction over the same issue in the same case. *Douglas E. Billings*, 41 ECAB 880 (1990). Following the docketing of an appeal with the Board, the Office does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by the Office on the same issues for which an appeal is filed is null and void. *Jimmy W. Galetka*, 43 ECAB 432, 433-44 (1992).