



wire cage. The Office accepted that appellant sustained a ventral hernia, a lumbar strain and an abdominal strain. On July 8, 1999 she filed a claim for a schedule award.

In replies to the Office's September 30, 1999 inquiry whether appellant had a permanent impairment related to her April 23, 1997 employment injury, Dr. James Bumgarner, a Board-certified surgeon, stated that she had no permanent impairment purely from the hernia surgery standpoint. Dr. Stephen W. Smith, a Board-certified orthopedic surgeon, stated that appellant had reached maximum medical improvement from her lumbar strain and had no permanent impairment. Dr. Smith referred to an August 13, 1999 report, in which he found the motor and sensory examination of appellant's lower extremities to be normal. In a December 10, 1999 report, Dr. Alexander Doman, a Board-certified orthopedic surgeon, concluded that appellant's abdominal discomfort was due to colitis rather than a work injury, that her back pain appeared psychogenic in origin as she lacked objective findings on examination and that she had no orthopedic condition. In a March 9, 2000 report, Dr. David A. Schiff, a Board-certified physiatrist, noted appellant's complaint of low back pain radiating to her right knee and numbness of both her feet, but stated that her inconsistencies on examination suggested a nonorganic basis for her pain.

On February 22, 2000 the Office advised appellant that a schedule award could not be paid for impairment of the back or for the whole body.

On February 19, 2001 appellant filed another claim for a schedule award. She submitted a February 19, 2001 report from Dr. Willie F. Rainey, Jr., a Board-certified internist, who diagnosed chronic low back pain and irritable bowel syndrome. In response to an Office inquiry on whether appellant had any permanent impairment, Dr. Rainey stated that she did not have any nerve root impairment or any permanent impairment of either lower extremity due to sensory deficit, pain, discomfort or decreased strength. An Office medical adviser reviewed the medical evidence on July 26, 2001 and stated that there was no lower extremity impairment seen.

In a January 6, 2003 report, a physician whose signature is not legible, diagnosed muscle pain of the left leg, irritable bowel syndrome and low back pain. A March 26, 2003 magnetic resonance imaging (MRI) scan of appellant's lumbar spine showed minimal degenerative changes and no cord or nerve root compression. In a May 16, 2003 report, Dr. Rainey diagnosed low back pain.

By decision dated June 25, 2003, the Office found that the evidence was not sufficient to establish any permanent impairment to a scheduled member of appellant's body.

By letter dated February 25, 2004, appellant requested reconsideration. She submitted additional medical evidence. In a January 28, 2004 report, Dr. Sevin D. Pollydore, a Board-certified physiatrist, noted that appellant used a cane, that her lumbosacral range of motion was markedly decreased in all planes and that, on neurological examination, appellant had intermittent numbness and tingling of the left leg and intermittent numbness of the right leg. He diagnosed abdominal pain, discogenic low back pain and intermittent bilateral leg numbness. A lumbar MRI scan on February 2, 2004 showed a small central disc protrusion at L5-S1. In a February 11, 2004, report Dr. Pollydore reviewed the results of the recent MRI scan, noted similar findings on examination and stated that electromyography and nerve conduction studies

showed “electrophysiologic evidence suggestive of a mild bilateral lumbosacral radiculitis involving the L5/S1 nerves.” He diagnosed lumbar degenerative disc disease and lumbosacral radiculitis. Dr. Pollydore repeated these diagnoses in an April 5, 2004 report. In a report dated February 18, 2004, Dr. Lawrence Seiden, a Board-certified neurologist, diagnosed probable cervical spine strain, muscle tension headaches and possible hernia.

By decision dated May 18, 2004, the Office found that appellant had not submitted evidence of a permanent impairment in connection with the accepted conditions.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. A schedule award is not payable for the loss or loss of use, of a member or function of the body not specifically listed in the Act and regulation.<sup>3</sup> The members and functions listed in the schedule award provision and the regulation do not include impairments of the back or the body as a whole. A claimant, though, may be entitled to a schedule award for a permanent impairment to the leg if the cause of the impairment originated in the spine.<sup>4</sup> A schedule award can be paid only for a condition related to an employment injury.<sup>5</sup> The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> *James E. Jenkins*, 39 ECAB 860 (1988).

<sup>4</sup> *John Litwinka*, 41 ECAB 956 (1990). Section 8107(a)(1) of the Act states a schedule award is “payable regardless of whether the cause of the disability originates in a part of the body other than that member.”

<sup>5</sup> 20 C.F.R. § 10.0(b) states that the Act provides for payment of “compensation for wage loss, schedule awards, medical and related benefits and vocational rehabilitation services for conditions resulting from injuries sustained in performance of duty while in service to the United States.” See *Nino V. Digregio*, 39 ECAB 366 (1988) (The Board denied the claim for a schedule award on the basis that the medical evidence did not establish a permanent lung impairment causally related to his exposure to asbestos at work.); *Robert T. Stephens*, 33 ECAB 1389 (1982) (The Board found appellant was not entitled to a schedule award because there was no permanent impairment attributable to his employment.)

<sup>6</sup> See *Ray H. Dewsnup*, 46 ECAB 907 (1995) (The Board found that appellant had not met his burden of proof to establish a permanent impairment to his lungs causally related to his employment injury of pneumonia.); *Gregory C. Esparza*, 42 ECAB 911 (1991) (The Board found that appellant was not entitled to a schedule award for a permanent impairment of his penis because he had not established the impairment was causally related to his accepted back injury.); *Ted W. Dietderich*, 40 ECAB 963 (1989) (The Board found appellant was not entitled to a schedule award because he had not established a permanent impairment to a scheduled member that was causally related to his employment injury.)

### ANALYSIS

All the medical evidence prior to the Office's initial decision on June 25, 2003 that addresses whether appellant has any permanent impairment states that she does not. Dr. Bumgarner stated that she had no permanent impairment from her hernia, Dr. Smith stated that appellant had no permanent impairment due to a lumbar condition and Dr. Rainey stated that she did not have a nerve root impairment or any permanent impairment of the leg. Dr. Doman stated that appellant had no orthopedic condition and Dr. Schiff stated that a nonorganic basis was suggested for her low back pain radiating to her right knee.

The reports from Dr. Pollydore, submitted with appellant's request for reconsideration of the Office's June 25, 2003 decision, state that she has bilateral leg numbness, which is an impairment for which a schedule award could be paid.<sup>7</sup> While Dr. Pollydore's reports indicate this leg numbness is due to radiculitis involving the L5-S1 nerves, there is no medical evidence that indicates the L5-S1 radiculitis is causally related to her accepted April 23, 1997 employment injury.<sup>8</sup>

### CONCLUSION

Appellant has not met her burden of proving that she has a permanent impairment of a scheduled member of the body that is causally related to her April 23, 1997 employment injury.

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<sup>7</sup> Section 17.21 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* provides a method for rating permanent impairment due to sensory deficits.

<sup>8</sup> That a March 26, 2003 MRI scan showed no cord or nerve root compression suggests that there is no such relationship.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 18, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2005  
Washington, DC

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member