

**United States Department of Labor
Employees' Compensation Appeals Board**

C.S., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Dallas, TX,
Employer**

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**Docket No. 09-1281
Issued: December 4, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 20, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 5, 2009, denying her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has a ratable permanent impairment to a scheduled member or function of the body, warranting a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

On December 31, 2001 appellant, then a 57-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome as a result of her federal job duties. The Office accepted the claim for bilateral carpal tunnel syndrome and

cervical strain. Appellant initially received treatment from Dr. Cynthia Smith, a family practitioner, who referred her to Dr. Gary Martin, a chiropractor.

Appellant submitted a claim for compensation (Form CA-7) dated November 16, 2007 for a schedule award. By letter dated December 6, 2007, the Office requested Dr. Smith to provide a report as to any impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). There is no indication that Dr. Smith responded.

By decision dated February 5, 2009, the Office determined that appellant was not entitled to a schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is 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.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.²

ANALYSIS

The Office found that appellant was not entitled to a schedule award in this case. On appeal, appellant states that the request for evidence was sent to the wrong physician, as she has been treated for several years by Dr. Martin, not Dr. Smith. The record indicates that Dr. Martin is a chiropractor. A chiropractor is a physician under the Act "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."³ The Board has held that, even under the circumstances where a chiropractor is recognized as a physician under the Act, he or she is not considered a physician in diagnosing or evaluating disorders of the extremities, although those disorders may originate in the spine.⁴ Since Dr. Martin could not offer a probative opinion as to a permanent impairment to a scheduled member or function, the Office sought an opinion from Dr. Smith. No evidence was received from Dr. Smith, nor did appellant submit any probative medical evidence on the issue of permanent impairment.

¹ 5 U.S.C. § 8107. 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(a).

² A. George Lampo, 45 ECAB 441 (1994).

³ 5 U.S.C. § 8101(2).

⁴ George E. Williams, 44 ECAB 530 (1993).

It is her burden of proof to establish a permanent impairment under the A.M.A., *Guides* causally related to an employment injury.⁵ The evidence of record does not establish that appellant has any impairment due to the accepted bilateral carpal tunnel condition warranting a schedule award under 5 U.S.C. § 8107.

CONCLUSION

The Board finds that the medical evidence does not establish any permanent impairment to a scheduled member or function of the body. The Office properly denied a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2009 is affirmed.

Issued: December 4, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁵ See *A.L.*, 60 ECAB ____ (Docket No. 08-1730, issued March 16, 2009).