

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

L.C., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,
FEDERAL LAW ENFORCEMENT TRAINING
CENTER, Glynco, GA, Employer**)

**Docket No. 09-1316
Issued: December 18, 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 22, 2009 appellant filed a timely appeal from the March 16, 2009 merit decision of the Office of Workers' Compensation Programs that denied a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained permanent impairment due to her April 27, 2004 employment injury.

FACTUAL HISTORY

On April 27, 2004 appellant, then a 45-year-old instructor, sustained a neck injury in the performance of duty: "I was leaning over to pick something up when another instructor inadvertently dropped a trash bag full of bed spreads on my head and neck." The Office accepted her claim for cervical sprain, depression, common migraine and cervical disc displacement without myelopathy. On April 12, 2005 appellant underwent an anterior cervical

discectomy and an anterior cervical anterior arthrodesis with placement of anterior cervical instrumentation and an interbody fusion device at the C5-6 level.

On August 15, 2007 Dr. Douglas P. Hein, a Board-certified orthopedic surgeon and Office referral physician, reported that appellant had significant relief of neck pain following her cervical discectomy and fusion but had ongoing complaints of weakness in the right upper extremity. Findings on physical examination included intact sensation neurologically but decreased grip strength in the right hand, which was reproducible. Dr. Hein reported the pattern and effort to be maximal and valid, and he confirmed that subjective complaints corresponded to the objective findings. He found that appellant reached maximum medical improvement around April 2006, one year from the time of her surgery.

On December 16, 2008 appellant filed a claim for a schedule award.

In a decision dated March 16, 2009, the Office denied appellant's claim for a schedule award on the grounds that she provided no evidence of permanent impairment to her upper extremities resulting from her accepted cervical conditions.¹

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.³

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.⁴ Because neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or neck,⁵ no claimant is entitled to such an award.⁶

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 scheduled or nonscheduled member. As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a

¹ After appellant's April 22, 2009 appeal to the Board for a review of the Office's March 16, 2009 decision, an Office hearing representative issued an August 28, 2009 decision on the same issue. Under *Douglas E. Billings*, 41 ECAB 880 (1990), the hearing representative's August 28, 2009 decision is null and void.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *William Edwin Muir*, 27 ECAB 579 (1976).

⁵ The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

⁶ *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.⁷

ANALYSIS

In its March 16, 2009 decision, the Office found that appellant provided no evidence to establish impairment to her upper extremities resulting from her accepted cervical conditions. However, that does not mean there is no medical evidence to support her claim for a schedule award. The Office's referral physician, Dr. Hein, a Board-certified orthopedic surgeon, examined appellant in August 2007 and found decreased reproducible grip strength in the right hand following her cervical discectomy and fusion. He noted that her subjective complaints corresponded to the objective findings, and that she reached maximum medical improvement around April 2006.

The medical evidence indicates that appellant may have a permanent impairment of her right upper extremity due to loss of strength as a result of her April 27, 2004 employment injury. Under the circumstances, the Board finds that the Office should further develop the medical evidence on this issue.⁸ The Board will set aside the Office's March 16, 2009 decision and remand the case to the Office for further development and an appropriate final decision on appellant's claim of permanent impairment.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

⁷ *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁸ *Melvin James*, 55 ECAB 406 (2004).

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: December 18, 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