

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

L.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Richmond, VA, Employer**

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**Docket No. 10-527
Issued: September 27, 2010**

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 December 18, 2009 appellant filed a timely appeal from the July 13, 2009 merit decision of the Office of Workers' Compensation Programs, which denied her schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained any impairment as a result of her accepted back injury.

FACTUAL HISTORY

On January 29, 1994 appellant, then a 33-year-old letter sorting machine clerk, sustained a back injury in the performance of duty from bending and lifting trays. The Office accepted her claim for thoracic and lumbar back strains and myofascial pain syndrome.

Appellant filed schedule award claims. Her orthopedic surgeon, Dr. William D. Brickhouse, reported that there was no ratable impairment because the injury involved the back

and thoracic spine. He stated that the only consistent clinical finding was tightness involving the perithoracic and lumbar muscles attributed to spasms. Dr. Brickhouse declined to rate impairment due to pain, the only potential impairment appellant might have.

The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Steven C. Blasdell, an orthopedic surgeon, for a second opinion evaluation. Dr. Blasdell reviewed appellant's history and complaints and described his findings on examination. He diagnosed chronic back pain behavior. Dr. Blasdell concluded that appellant had no permanent impairment due to pain. There were no objective findings to substantiate her subjective complaints. There were several nonphysiologic findings and appellant demonstrated exaggerated pain responses, which tended to decrease the credibility of her current subjective complaint and which indicated the presence of symptom magnification. Dr. Blasdell was of the opinion that she had recovered from any injury resulting from the 1994 work episode.

On March 19, 2009 the Office denied appellant's claim for a schedule award. It found that the medical evidence did not support any permanent impairment to a scheduled member or function of the body.

In a July 13, 2009 decision, an Office hearing representative reviewed the written record and affirmed the denial of appellant's schedule award claim. The hearing representative noted that the Office did not accept any condition involving a spinal nerve or nerve root impairment, and there was no medical evidence establishing an injury-related impairment to any upper or lower extremity.

Appellant contends on appeal that her injury is well documented and that she still hurts in the same area as her initial injury.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ 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*.²

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.³ Because neither the Act nor the implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back,⁴ no

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.0808.6.a (January 2010).

³ *William Edwin Muir*, 27 ECAB 579 (1976).

⁴ The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

claimant is entitled to such an award.⁵ As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.⁶

ANALYSIS

The Office accepted that appellant sustained thoracic and lumbar strains and myofascial pain syndrome as a result of bending and lifting trays in the course of her federal employment. Having filed a schedule award claim, appellant carries the burden of proof to establish that these medical conditions have caused a permanent physical impairment to her upper or lower extremities. She can receive no schedule award for any impairment to her back.

Appellant's orthopedic surgeon, Dr. Brickhouse, found no ratable permanent impairment because the injury involved the back and thoracic spine. He stated that the only consistent clinical finding was perithoracic and lumbar muscle tightness. Dr. Blasdell, the second opinion orthopedic surgeon, also found no permanent impairment. He stated that there was no objective basis to rate impairment due to pain.

Without a well-reasoned medical opinion explaining how the 1994 thoracic and lumbar back strains and myofascial pain syndrome caused permanent physical impairment of appellant's upper or lower limbs under the sixth edition of the A.M.A., *Guides*, the evidence is insufficient to support her schedule award claim. The Board finds that she has not met her burden of proof. The Board will therefore affirm the Office hearing representative's July 13, 2009 decision.

Appellant argues on appeal that she experiences pain in the same area as her initial injury but this alone does not mean she sustained permanent impairment to a scheduled member. Her physician did not explain how a thoracic or lumbar back strain or her myofascial pain syndrome would impair an upper or lower limb. As the Office noted, the 1994 injury did not involve damage to a spinal nerve root. There is not evidence of sensory or motor impairment to an arm or a leg. The evidence of record does not establish impairment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained permanent impairment as a result of her accepted employment injury.

⁵ *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

⁶ *Rozella L. Skinner*, 37 ECAB 398 (1986).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2010
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