

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNON RIGGINS and U.S. POSTAL SERVICE,
BULK BUSINESS MAIL ANNEX, Langhorne, Pa.

*Docket No. 96-315; Submitted on the Record;
Issued August 6 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has a permanent impairment of the legs causally related to his July 31, 1990 employment injury.

The only Office of Workers' Compensation Programs decisions before the Board on this appeal is the Office's October 3, May 4 and February 2, 1995 decisions finding that appellant was not entitled to a schedule award for the legs because he had not established that he had a permanent impairment causally related to his July 31, 1990 employment injury. Since more than one year elapsed between the date of the Office's most recent decision addressing the termination of his compensation for disability, issued on August 26, 1993, and the filing of appellant's appeal on November 22, 1995, the Board lacks jurisdiction to review the Office's termination of his compensation for disability.¹

The Board finds that appellant has not established that he has a permanent impairment of the legs causally related to his July 31, 1990 employment injury.

Appellant has the burden of proving that he has an employment-related permanent impairment that would entitle him to a schedule award.² If a claimant fails to provide a physician's report which contains a complete and detailed description of the nature and extent of

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

² *J.C. Hicks*, 34 ECAB 1347 (1983).

the impairment such that the Office, utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,³ can determine an impairment rating, the Office may properly deny the claim for a schedule award.⁴

In the present case, appellant, in support of his claim for a schedule award, submitted a June 27, 1995 report from his attending physician, Dr. Paul S. Zatz, an osteopath. In this report Dr. Zatz stated:

“[Appellant] was examined in my office on June 15, 1995. He is still experiencing chronic pain about the lumbar spine with radicular symptoms into the lower extremities consisting of pain, weakness and numbness. The condition of his lower back and bilateral lower extremities contribute to 30 [percent] loss of bodily function.”

The anatomical members and functions for which the Act provides for payment of schedule awards do not include impairments of the back or the body as a whole.⁵ A claimant may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originated in the spine.⁶ Dr. Zatz’s June 27, 1995 report, however, does not differentiate between the percentage attributable to appellant’s leg and that attributable to his back, and is thus not a proper basis for determining a schedule award.⁷ Appellant has not submitted medical evidence sufficient to meet his burden of proving that he has a permanent impairment of the legs causally related to his July 31, 1990 employment injury.

³ The schedule award provision of the Federal Employees’ Compensation Act (5 U.S.C. § 8107) and its implementing regulation (20 C.F.R. § 10.304) set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. 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 A.M.A., *Guides* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.

⁴ *James E. Jenkins*, 39 ECAB 860 (1988); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (March 1995) provides that the file must contain competent medical evidence which “describes the impairment in sufficient detail for the CE [claims examiner] to visualize the character and degree of disability,” and that the report of the attending physician “must always include” a detailed description of the impairment.

⁵ *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁶ *George E. Williams*, 44 ECAB 530 (1993).

⁷ *Glen R. Clark*, 38 ECAB 724 (1987).

The decisions of the Office of Workers' Compensation Programs dated October 3, May 4 and February 2, 1995 are affirmed.

Dated, Washington, D.C.
August 6 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member