

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LLOYD J. WRIGHT and U.S. POSTAL SERVICE,
EAST AUSTIN STATION, Austin, Tex.

*Docket No. 96-2149; Submitted on the Record;
Issued August 14, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established his entitlement to a schedule award for permanent partial impairment of his right shoulder.

On September 24, 1994 appellant, then a 56-year-old letter carrier, filed a notice of occupational disease, claiming that his duties in casing and delivering the mail had caused and aggravated bursitis in his right shoulder. The Office of Workers' Compensation Programs accepted the claim for right shoulder bursitis and impingement syndrome.

Appellant's request for light duty was approved and he returned to work on October 18, 1994. On January 18, 1996 appellant accepted a limited-duty offer.

Subsequently, appellant filed a claim for a schedule award and on April 9, 1996 the Office wrote to Dr. L. Don Greenway, a Board-certified orthopedic surgeon, who had treated appellant's shoulder condition in 1994 to 1995, asking him to submit an opinion on whether appellant had sustained permanent impairment of his shoulder.

In a decision dated May 17, 1996, the Office denied a schedule award, noting that Dr. Greenway had not responded to its April 9, 1996 letter and the record contained no medical evidence showing permanent impairment from the accepted work injury.

Appellant timely requested reconsideration and stated that he had undergone a magnetic resonance imaging scan ordered by Dr. Greenway on May 20, 1996 and that Dr. Greenway would be sending the requested information.

On June 13, 1996 the Office denied appellant's request for reconsideration on the grounds that he had neither submitted new and relevant evidence nor raised a substantive legal question.

The Board finds that appellant has failed to establish his entitlement to a schedule award.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for the permanent impairment of specified bodily members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³

However, neither the Act nor the regulations specify the method, by which the percentage of impairment shall be determined.⁴ The method used in making such determinations rests in the sound discretion of the Office.⁵ For consistent results and to ensure equal justice for all claimants, the Office has adopted and the Board has approved, the use of the appropriate edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.⁶

In this case, the Office wrote to Dr. Greenway on April 9, 1996, asking him to submit his assessment of permanent impairment according to the A.M.A., *Guides* and the Office's instructions on the necessary medical evidence. As no medical reports were received, the Office denied the claim on May 17, 1996. In his May 29, 1996 letter, appellant stated that he would submit the requested information, but no medical evidence was received by the Office before its June 13, 1996 decision denying reconsideration.

On appeal appellant submitted copies of Dr. Greenway's June 5, 1996 report and a May 17, 1996 impairment evaluation.⁷ The record reveals that this evidence was date stamped as received by the Office on June 14, 1996, one day after its decision was rendered. The Board's jurisdiction of a case is limited to reviewing that evidence, which was before the Office at the time of its final decision.⁸ Thus, the new evidence dated May 17 and June 5, 1996 cannot be considered by the Board on appeal as it was received following the Office's final decision dated May 17, 1996.

¹ 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19); *William Edwin Muir*, 27 ECAB 579, 581 (1976); see *Terry E. Mills*, 47 ECAB ____ (Docket No. 94-837, issued January 30, 1996) (listing the members and organs of the body for which the loss or loss of use is compensable under the schedule award provisions).

⁴ *A. George Lampo*, 45 ECAB 441, 443 (1994).

⁵ *George E. Williams*, 44 ECAB 530, 532 (1993).

⁶ *James J. Hjort*, 45 ECAB 595, 599 (1994).

⁷ The Office informed appellant in a letter dated June 13, 1996 that he could request reconsideration if he had new evidence to submit and that no new evidence could be submitted to the Board if he chose to appeal.

⁸ 20 C.F.R. § 501.2(c); *William A. Couch*, 41 ECAB 548, 553 (1990).

The June 13 and May 17, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 14, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member