

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREEMAN J. SMALL and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, Ala.

*Docket No. 96-1741; Submitted on the Record;
Issued May 7, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established a permanent impairment entitling him to a schedule award under 5 U.S.C. § 8107.

The Board has reviewed the case record and finds that appellant has not established entitlement to a schedule award in this case.

On August 14, 1995 appellant, a 49-year-old special delivery worker, filed a claim alleging that he injured his shoulder, chest, and arm when he suddenly braked his vehicle and was pulled back by his seat belt while in the course of his federal employment. Following evidentiary development, the Office of Workers' Compensation Programs accepted the claim for a herniated disc C6-7. A discectomy and fusion of the C6-7 discs was performed on September 15, 1995.

By decision dated March 26, 1996, the Office denied appellant's claim for a schedule award because the evidence failed to establish that he was entitled to receive such an award for a permanent partial impairment of the back.

The schedule award provision of the Federal Employees' Compensation Act and its implementing regulations provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.¹ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determinations is a matter which rests in the sound discretion of the Office. As a matter of administrative practice and to ensure consistent results to all claimants, the Office has adopted and the Board has approved of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.

¹ 5 U.S.C. § 8107; 20 C.F.R. § 10.304.

In the present case, appellant's treating physician, Dr. Robert Q. Craddock, a Board-certified neurological surgeon, submitted a February 9, 1996 report stating that appellant had a herniated cervical disc and that he performed an anterior cervical microdiscectomy. He stated that appellant had "a nine percent permanent ... impairment rating to the body as a whole due to the August 8, 1995 on-the-job injury."

As noted above, schedule awards are limited to permanent impairments of specified members of the body. The Board has held:

"A schedule award is not payable for the loss or loss of use, of a part of the body not specifically enumerated in the Act. Neither the Act nor its regulations provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of 'organ' under the Act."²

In the present case, Dr. Craddock provided the only medical report addressing whether appellant suffered a permanent impairment due to his accepted employment injury. After diagnosing appellant with a herniated cervical disc and noting that he performed an anterior microdiscectomy, he stated that appellant had "a nine percent permanent ... impairment rating to the body as a whole due to the August 8, 1995 on-the-job injury." Dr. Craddock did not describe an impairment to a member of the body enumerated under 5 U.S.C. § 8107 or its implementing regulations. Accordingly, the Board finds that appellant has not established entitlement to a schedule award pursuant to section 8107 of the Act.

The decision of the Office of Workers' Compensation Programs dated March 26, 1996 is affirmed.

Dated, Washington, D.C.
May 7, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

² *James E. Mills*, 43 ECAB 215 (1991); *James E. Jenkins*, 39 ECAB 860 (1988).