

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRED S. HUELLE and DEPARTMENT OF THE ARMY,  
Fort Wainwright, Alas.

*Docket No. 96-2002; Submitted on the Record;  
Issued May 20, 1998*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant is not entitled to a schedule award.

The Office accepted that appellant's September 8, 1993 employment injury resulted in a laceration of the scalp and a fracture of the spinous process at T1. By decision dated January 3, 1996, the Office determined that appellant was not entitled to a schedule award, as there was no permanent impairment of the upper extremities and no provision for payment of a schedule award for loss of use of the neck or back.

The Board finds that the Office properly determined that appellant is not entitled to a schedule award.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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. The anatomical members and functions for which the Act and the regulation provide for payment of schedule awards do not include impairments of the back, neck or the body as a whole.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> *Rozella L. Skinner*, 37 ECAB 398 (1986); *Arturo Vitalino*, 30 ECAB 1299 (1979).

<sup>4</sup> *George E. Williams*, 44 ECAB 530 (1993).

Appellant's attending physician, Dr. Cary S. Keller, an orthopedic surgeon, performed an impairment rating of appellant on January 11, 1994. In this report, Dr. Keller indicated that appellant had a 6 percent permanent impairment of the whole person due to degenerative disc disease and a 13 percent permanent impairment of the whole person due to loss of motion of the cervical spine. As noted above, a schedule award is not payable under the Act for a permanent impairment to the neck or spine. In his January 11, 1994 report, Dr. Keller reported that appellant's "total impairment due to weakness from C5-6, C7-8 and T1 is ... zero [percent] [upper] extremity," and that [appellant's] "total impairment due to lost sensation from C5-6, C7-8, and T1 is ... zero [percent] upper extremity." As Dr. Keller reports no impairment, in the form of weakness or lost sensation or the upper extremities, and as there is no other evidence of any such impairment of the upper extremities, appellant is not entitled to a schedule award.

The decision of the Office of Workers' Compensation Programs dated January 3, 1996 is affirmed.

Dated, Washington, D.C.  
May 20, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member