

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH L. STRUCK and U.S. POSTAL SERVICE,
POST OFFICE, Billings, Mont.

*Docket No. 96-760; Submitted on the Record;
Issued October 16, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent permanent impairment of his left lower extremity for which he received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than a two percent permanent impairment of his left lower extremity for which he received a schedule award.

Appellant filed a claim on March 21, 1989 alleging that he injured his lower back and left hip in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain, herniated lumbar disc and laminectomy. By decision dated June 3, 1992, the Office granted appellant a schedule award for a two percent permanent impairment of his left lower extremity.¹ Appellant filed a claim for an additional schedule award on October 26, 1994. By decision dated August 29, 1995, the Office denied appellant's claim for an additional schedule award.

Section 8107 of the Federal Employees' Compensation Act² provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the*

¹ The period of this award was from December 16, 1990 through January 25, 1991. In a decision dated October 5, 1993, the Board found that appellant was entitled to wage-loss compensation for total disability during the period of December 1, 1990 through March 3, 1991. (Docket No. 92-2027, issued October 5, 1992). On appeal, appellant contends that he is entitled to both wage-loss compensation and his previously received schedule award payment from December 16, 1990 through January 25, 1991. As the Office noted below, appellant is not entitled to dual workers' compensation benefits for the same injury. *Joseph R. Waples*, 44 ECAB 936, 939-40 (1993).

² 5 U.S.C. §§ 8101-8193, 8107.

*Evaluation of Permanent Impairment*³ as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

In this case, appellant's attending physician, Dr. William S. Shaw, a physician Board-certified in physical medicine and rehabilitation, completed a report on January 13, 1995 and found that appellant had a two percent impairment of his left lower extremity. He attributed this finding to lumbar forward flexion of 70 degrees, backward extension of 18 degrees and a class two impairment of the L4 root affecting the left lower extremity.

The district medical adviser reviewed Dr. Shaw's findings and applied the A.M.A., *Guides*.⁵ He concluded that appellant had no more than a two percent permanent impairment of his left lower extremity due to his accepted condition.⁶

As there is no medical evidence supporting that appellant has more than a two percent permanent impairment of his left lower extremity, the Office properly denied his claim.

The decision of the Office of Workers' Compensation Programs dated August 30, 1995 is hereby affirmed.

Dated, Washington, D.C.
October 16, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

³ A.M.A., *Guides* (4th ed. 1993).

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

⁵ A.M.A., *Guides*, 48, Table 11; 130, Table 83.

⁶ A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or for impairment to the whole person, no claimant is entitled to such an award. *George E. Williams*, 44 ECAB 530, 533 (1993).