

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREW G. LOPEZ and U.S. POSTAL SERVICE,
POST OFFICE, Big Spring, Tex.

*Docket No. 97-843; Submitted on the Record;
Issued April 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained any permanent impairment causally related to his May 26, 1992 employment injury which entitles him to a schedule award.

On May 26, 1992 appellant, then a 37-year-old distribution clerk, sustained a low back strain at work when he lifted a hamper onto a truck. He returned to full-duty work on May 26, 1993.

By letter dated October 12, 1993, the Office of Workers' Compensation Programs asked appellant's attending Board-certified orthopedic surgeon, Dr. Mark A. Doyne, to provide a report containing objective findings on examination, subjective complaints, diagnosis of any condition affecting appellant's extremities and the percentage of impairment of the extremities, if any, with an explanation of how he calculated the impairment using applicable tables in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter the A.M.A., *Guides*). The Office advised Dr. Doyne that compensation awards were not granted for loss of function of the spine but, if work-related spinal pathology affected the function of an extremity, an award might be allowed for permanent impairment of the affected extremity.

In a report dated April 8, 1993, Dr. James D. Cable, a Board-certified family practitioner, provided a history of appellant's condition and stated that he had performed an impairment evaluation based on the A.M.A., *Guides*. He stated that appellant had a 5 percent permanent impairment for "a specific disorder" and a 5 percent impairment for loss of range of motion of the spine, equaling a 10 percent impairment of the whole person relative to appellant's May 1992 employment-related back injury.

In a report dated March 1, 1995, the district medical adviser noted that Dr. Cable assigned a permanent impairment value of "10 percent whole person," and explained that it included "5 percent for his diagnosis, and 5 percent for range of motion." The district medical adviser noted that the diagnosis referred to by Dr. Cable involved the spine and not a scheduled

member of the body. He noted that the second part of the impairment determination of Dr. Cable dealt with range of motion and his description indicated that this also referred to the spine and not to any restricted motion of a scheduled member of the body. The district medical adviser stated that the medical evidence did not provide support for a permanent partial impairment of either of appellant's lower extremities.

By decision dated September 21, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record did not establish that he had any permanent impairment of a scheduled body member and was therefore not entitled to a schedule award.

In an undated letter received by the Office on October 18, 1995, appellant requested an oral hearing before an Office hearing representative.

On June 4, 1996 a hearing was held before an Office hearing representative at which time appellant testified.

In a report dated May 28, 1996, Dr. Orlando T. Garza, an orthopedic surgeon, stated that he had evaluated appellant for spinal impairment according to the A.M.A., *Guides*. He related that appellant reported occasional numbness to the bilateral lower extremities but could discern light touch and discrimination. He stated that there were no conclusive sensory or strength deficits confirmed by nerve root testing and the diagnosis was post lumbar disc syndrome. He assigned a 13 percent impairment of the spine based on an 8 percent range of motion impairment of the spine and a 5 percent impairment due to specific disorders of the spine.

By decision dated September 30, 1996, the Office hearing representative affirmed the Office's September 21, 1995 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained any permanent impairment to a scheduled member of the body causally related to his May 26, 1992 employment injury which entitles him to a schedule award.

Section 8107 of the Federal Employees' Compensation Act 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.¹

A schedule award is not payable for the loss, or loss of use, of a part of the body that is not specifically enumerated under the Act. Neither the Act nor its implementing regulations provides 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 an organ under the Act.²

¹ 5 U.S.C. § 8107(a).

² *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

In this case, appellant sustained an employment-related low back strain on May 26, 1992. In support of his claim for a schedule award, he submitted a report dated April 8, 1993 from Dr. Cable, a Board-certified family practitioner, who provided an impairment evaluation of 10 percent of the whole person based upon findings involving appellant's back. As noted above, the Act does not provide a schedule award for the back. Furthermore, a schedule award is not payable under section 8107 of the Act for an impairment of the whole person.³ As Dr. Cable did not provide any findings indicating permanent impairment of a scheduled member of the body, such as an extremity, this report does not support appellant's claim for a schedule award.

Appellant also submitted a May 28, 1996 report from Dr. Garza, an orthopedic surgeon, in which he indicated that there was no objective evidence of any sensory or strength deficits of the lower extremities. He opined that appellant had a 13 percent permanent impairment of the spine. As Dr. Garza did not determine that appellant had a permanent impairment of a scheduled member of the body, this report does not support his claim for a schedule award.

The decision of the Office of Workers' Compensation Programs dated September 30, 1996 is affirmed.

Dated, Washington, D.C.
April 26, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).