

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY JO GRAY and U.S. POSTAL SERVICE,
POST OFFICE, Klein, TX

*Docket No. 98-1470; Submitted on the Record;
Issued December 1, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established any ratable impairment that is causally related to her accepted February 12, 1996 employment injuries of lumbosacral strain and herniated nucleus pulposus at the L5 to S1 level.

On February 13, 1996 appellant, then a 39-year-old city letter carrier, filed a notice of traumatic injury and claim, alleging that she sustained an injury to her lower back while in the performance of duty on February 12, 1996. Appellant stopped work on February 13, 1996 and returned to work on February 26, 1996. Appellant stopped work again on April 16, 1996. By decision dated May 30, 1996, the Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral sprain and herniated nucleus pulposus at the L5 to S1 level. Appellant returned to limited-duty work on October 8, 1996. In a decision dated May 24, 1997, the Office determined that appellant had been reemployed as a modified carrier effective October 8, 1996 with permanent restrictions. The Office reduced appellant's compensation to zero based on this reemployment. On January 8, 1998 appellant filed a claim for a schedule award. In a decision dated March 12, 1998, the Office determined that appellant had no ratable permanent impairment in relation to her February 12, 1996 employment injuries.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established a ratable permanent impairment that is causally related to her February 12, 1996 employment injury.¹

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on April 6, 1998, the only decision before the Board is the Office's March 12, 1998 decision; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

Section 8107 of the Federal Employees' Compensation Act² and its implementing regulations³ 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. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.⁴

In the present case, the Office requested that Dr. Samuel Alianell, appellant's treating physician and a Board-certified physiatrist, submit an impairment rating of appellant's lower extremity due to job-related spinal pathology. The Office advised Dr. Alianell that the back is not a ratable schedule member. However, an impairment rating for the lower extremities could be derived if there was significant pain, sensory deficit or motor impairment of the lower extremity. In response to the Office's request for additional information, it received a report by Anita B. Benson, a physical therapist and a report dated July 2, 1997 from Dr. Alianell. Ms. Benson provided information relevant to an impairment rating based on the third edition revised of the A.M.A., *Guides*. However, a physical therapist is not a physician within the meaning of the Act and, therefore, her opinion does not constitute probative evidence in this regard. Dr. Alianell provided an impairment rating of 14 percent of the whole body due to loss of range of motion and a 7 percent impairment rating due to specific disorders of the spine due to herniated nucleus pulposus with radiculopathy. He concluded that appellant had a combined rating of a 20 percent impairment of a whole person.

The Office properly referred Dr. Alianell's July 2, 1997 report to a district medical adviser for review. He determined that appellant had reached maximum medical improvement on July 2, 1997. The district medical adviser noted that Dr. Alianell described impairment based on the loss of motion in the spine and specific disorders of the spine. In addition, Dr. Alianell did not provide any physical findings that described impairment to appellant's lower extremity. He conclude that since the spine is not a ratable schedule member, he was unable to recommend an impairment for appellant. As neither the Act nor the implementing regulation provide for schedule awards with respect to impairments to the spine, the Office properly determined that appellant had not established a ratable impairment with respect to her accepted February 12, 1996 employment injury and therefore she is not entitled to a schedule award.

² 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.304.

⁴ *Quincy E. Malone*, 31 ECAB 846 (1980).

The decision of the Office of Workers' Compensation Programs dated March 12, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 1, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member